

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

In the Matter of	)	
	)	
Bloomberg L.P.,	)	
	)	
Complainant,	)	MB Docket No. 11-104
	)	
v.	)	
	)	
Comcast Cable Communications, LLC,	)	
	)	
Defendant.	)	

To: Chief, Media Bureau

**ANSWER OF COMCAST CABLE COMMUNICATIONS, LLC**

**DAVIS POLK & WARDWELL LLP**  
450 Lexington Avenue  
New York, NY 10017  
(212) 450-4000

**WILKINSON BARKER KNAUER, LLP**  
2300 N Street, N.W., Suite 700  
Washington, DC 20037  
(202) 783-4141

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*Attorneys for Comcast Cable Communications, LLC*

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  - *Attachment B* – Letter from David Boies, Esq., Boies, Schiller & Flexner LLP, and Stephen Diaz Gavin, Esq., Patton Boggs LLP, Counsel for Bloomberg, to Neil Smit, President, Comcast Cable Communications, LLC (May 26, 2011) (“Pre-Complaint Letter”)
  - *Attachment C* – Letter from Arthur R. Block, Esq., Senior Vice President, General Counsel and Secretary, Comcast Corporation, to David Boies, Esq., Boies, Schiller & Flexner LLP, and Stephen Diaz Gavin, Esq., Patton Boggs LLP, Counsel for Bloomberg L.P. (June 6, 2011)
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- *Attachment A* – Description of News Channel Classification Process.
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  - *Attachment D* – Customer Communication Materials of Insight Communications Company and Time Warner Cable to Announce Introduction of Genre Neighborhoods
  - *Attachment E* – AT&T Channel Lineup for Seattle, Washington, July 2002
- Exhibit 5 Declaration of Mark Israel
- Exhibit 6 *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. for Consent To Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, MB Docket No. 10-56, 26 FCC Rcd 4238 (2011) (Relevant Excerpts)
- Exhibit 7 Testimony of Gregory Babyak, Head of Government Relations, Bloomberg, Before the Senate Committee on Commerce, Science & Transportation (Mar. 25, 2010), *attached to* Letter from Stephen Diaz Gavin, Esq., Patton Boggs LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (June 21, 2010)

- Exhibit 8 Petition to Deny of Bloomberg L.P., MB Docket No. 10-56 (June 21, 2010) (Relevant Excerpts)
- *Attachment A* – Bloomberg Response to Petitions to Deny and Comments, Docket No. 10-56 (July 21, 2010)
- Exhibit 9 Bloomberg L.P. Reply to Comcast-NBCU Opposition, MB Docket No. 10-56 (Aug. 19, 2010) (Relevant Excerpts)
- Exhibit 10 Letter from Stephen Diaz Gavin, Patton Boggs LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (Oct. 18, 2010), *and* Attachment, “The Commission Should Require Comcast to Neighborhood News Channels to Preserve Diversity and Competition in News”
- Exhibit 11 Letter from Michael H. Hammer, Esq., Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (Oct. 22, 2010)
- Exhibit 12 Letter from Matthew B. Berry, Patton Boggs LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (Dec. 10, 2010)
- Exhibit 13 Letter from Matthew B. Berry, Patton Boggs LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (Dec. 20, 2010)
- Exhibit 14 Letter from Markham C. Erickson, Holch & Erickson LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (Jan. 18, 2011)
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- Exhibit 17 Letter from Kathryn A. Zachem, Vice President, Regulatory and State Legislative Affairs, Comcast Corporation, *et al.* to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (Jan. 21, 2011)
- Exhibit 18 Tanzina Vega, *Bloomberg TV Pushes for Wider Audience*, N.Y. TIMES, June 21, 2011

- Exhibit 19 Stephanie Clifford & Julie Creswell, *At Bloomberg, A Modest Strategy To Rule The World*, N.Y. TIMES, Nov. 15, 2009
- Exhibit 20 Tony Kiss, *Charter customers baffled by channel changes*, THE ASHEVILLE CITIZEN-TIMES, Aug. 27, 2009
- Exhibit 21 Jon Friedman, *Bloomberg TV tries to become a player*, MARKETWATCH, Feb. 6, 2009
- Exhibit 22 Simon Applebaum, *Meet the System Evansville, Ind.: Back Home Again, in Indiana 2.0*, CABLEFAX'S CABLE WORLD, Feb. 5, 2007
- Exhibit 23 R. Thomas Umstead, *Does a Lower-Dial Slot Still Matter?*, MULTICHANNEL NEWS, July 20, 2003
- Exhibit 24 Jade Garrett, *Bloomberg TV adopts 'chosen few' strategy*, HAYMARKET, Mar. 26, 1999
- Exhibit 25 Barbara Vancheri, PITTSBURGH POST-GAZETTE, Jan. 9, 1997
- Exhibit 26 *CableVision Juggles Its Channel Lineup*, LAKELAND LEDGER, Jan. 1, 1992
- Exhibit 27 Merriam Webster's Collegiate Dictionary, p. 1091 (10th ed. 1995)
- Exhibit 28 A large black rectangular redaction covers the text for Exhibit 28. To the left of this redaction, there are five bullet points, each followed by a smaller black rectangular redaction.

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**ANSWER OF COMCAST CABLE COMMUNICATIONS, LLC**

Comcast Cable Communications, LLC (“Comcast”) hereby responds to the above-captioned program carriage complaint (“Complaint”) filed by Bloomberg L.P. (“Bloomberg”).<sup>1</sup> The Complaint is without merit and should be denied.

**INTRODUCTION AND SUMMARY**

1. The Complaint represents Bloomberg’s second attempt to extract preferential channel placement on Comcast’s cable systems through regulatory gamesmanship. The Commission rebuffed Bloomberg’s first attempt when it “decline[d] to adopt a requirement that Comcast affirmatively undertake neighborhooding” as part of the Comcast-NBCUniversal Order.<sup>2</sup> Instead, the Commission adopted a condition (the “Condition”) that, if Comcast “now or

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<sup>1</sup> See *Bloomberg L.P. v. Comcast Cable Communications, LLC*, Complaint, MB Docket No. 11-104 (June 13, 2011) (“Compl.”).

<sup>2</sup> *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. for Consent To Assign Licenses and Transfer Control of Licensees*, Memorandum

in the future” undertook to neighborhood its news channels, it would be required to include independent news channels in those “neighborhoods.”<sup>3</sup>

2. Undeterred, Bloomberg now attempts to transform that “narrowly tailored condition” into the affirmative neighborhooding requirement that the Commission rejected.<sup>4</sup> In particular, Bloomberg advances an expansive interpretation of the Condition that would find news “neighborhoods” on many hundreds of Comcast’s cable systems throughout the nation. As a result, it would compel Comcast to undertake widespread relocation of Bloomberg Television (“BTV”)—and potentially numerous other independent news channels—into these “neighborhoods.” This, in turn, would displace the popular, established networks now located in the channel positions near those proposed “neighborhoods”—networks like ESPN, Discovery Channel, Cartoon Network, and Animal Planet. The resulting upheaval would injure these displaced networks and confuse and frustrate customers. The Media Bureau should reject Bloomberg’s position and promptly deny the Complaint for three interrelated reasons.

3. *First*, Bloomberg’s Complaint is based on an arbitrary and baseless definition of a news neighborhood as “four news channels within five positions.” But that definition was neither supplied nor endorsed by the Commission. Instead, it is entirely Bloomberg’s invention and ignores the Order’s guidance that a “neighborhood” must include a “significant number or percentage” of the news channels carried on the cable system. Four news channels account for only a small fraction of the news channels Comcast carries—many of which Bloomberg has

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Opinion and Order, MB Docket No. 10-56, 26 FCC Rcd 4238, 4287 ¶ 122 (2011) (the “Comcast-NBCUniversal Order,” or the “Order”) (relevant excerpts attached as Ex. 6).

<sup>3</sup> *Id.* at 4358 § III.2; *see also id.* at 4288 ¶ 123 n.295 (“Our condition . . . would only take effect if Comcast-NBCU undertook to neighborhood its news or business news channels. . . .”).

<sup>4</sup> Order, 26 FCC Rcd at 4287–88.

simply ignored. Moreover, as demonstrated by expert Michael Egan in the attached declaration,<sup>5</sup> the established industry practice for “neighborhooding” typically involves groupings of at least ten or more new channels constituting more than 60 or 70 percent of the news channels carried on a system.

4. Indeed, in its own prior advocacy before the Commission, Bloomberg cited examples of news neighborhoods involving 10–15 channels. And groupings of this size or larger were the *only* examples of news neighborhooding before the Commission when it adopted the Condition. Most significantly, Comcast’s own Master Channel Line-Up (“MCLU”) trial—the sole example before the Commission of neighborhooding by *Comcast*, and thus necessarily the baseline for informing the Condition’s focus—groups together *sixteen* news channels.<sup>6</sup> In short, the record does not support Bloomberg’s new, far more expansive interpretation of the Condition.

5. Further, Bloomberg’s proposed definition would result in many cable systems having *more than one* news neighborhood, even within the standard-definition (“SD”) lineups, with BTV frequently *already in* one of those neighborhoods. But Bloomberg made and the Commission *rejected* a request to include multiple neighborhoods in the Order. The Commission cannot be understood to have adopted an interpretation of neighborhooding that would simply reintroduce this option through the back door.

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<sup>5</sup> Declaration of Michael Egan, July 27, 2011 (“Egan Decl.”) (attached as Ex. 4) ¶ 19.

<sup>6</sup> Letter from Michael H. Hammer, Esq., Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Commc’ns Comm., MB Docket 10-56 (filed Oct. 22, 2010) (the “Oct. 22 *Ex Parte*”) (attached as Ex. 11).

6. *Second*, Bloomberg’s interpretation of the Condition is inconsistent with the Commission’s intent to minimize disruption to third parties, such as displaced programming networks and Comcast subscribers. The Commission described the Condition as “narrowly tailored” based upon a record establishing that cable operators seldom “neighborhood” news networks and, in the rare circumstances where this occurs, they do so only in digital channel ranges (above 99) in order to minimize channel-relocation disruption and leave room for additional news networks that might later emerge. As noted, Comcast’s own limited “neighborhooding” experiment necessarily informed the Commission’s understanding both of when and how the Condition would be triggered and how it would apply.

7. But Bloomberg’s definition not only has a different trigger, it also has an impact that would be anything but “narrow” or “tailored.” Bloomberg’s definition finds news “neighborhoods” throughout the analog 1–99 channel range, where there are few, if any, adjacent channel positions available. It thus would require significant network relocation throughout Comcast’s systems in order to move BTV (and potentially other independent news channels) into those “neighborhoods.” In some cases, adjacent channel positions are occupied by broadcasters with statutory rights to be carried on their off-air channel positions or other positions where they have had historical carriage. These networks simply cannot be moved. In many other cases, adjacent channel positions are occupied by popular cable networks that Comcast would be required to displace from their long-standing channel positions in order to accommodate BTV and other independent news networks. And finding a new home for these displaced networks would likely require displacing other networks, triggering a domino effect of channel relocations. The result of this cascade of channel relocations would be needless and ongoing disruption to Comcast’s customers.

8. The point is not that the Condition should be interpreted to ensure that there be no channel relocations under any circumstances. But there is a complete disconnect between Bloomberg's four-channels-within-five-slots definition (which would find a neighborhood virtually everywhere and thus trigger widespread disruption today in the legacy analog channel lineups) and what the Commission clearly intended, which was that BTV be included in "neighborhoods" like Comcast's MCLU, or newer types of broad, digital neighborhoods. The latter would entail relatively little disruption.

9. *Third and finally*, Bloomberg's Complaint must be denied because the Condition is prospective in nature. It applies only to news neighborhoods (like those in the MCLU) that Comcast may have been introducing as the Comcast-NBCUniversal transaction (the "Transaction") closed, *i.e.*, "now," and similarly broad groupings of news channels that Comcast might introduce thereafter, *i.e.*, "in the future." The alleged "neighborhoods" Bloomberg describes were formed years before Comcast even began negotiations to acquire an ownership interest in NBCUniversal (and by extension, CNBC and MSNBC)—indeed, in most cases before Comcast even owned the systems. Bloomberg does not allege (nor could it) that Comcast has recently rearranged channels in order to create news neighborhoods that exclude or disadvantage BTV. Retrospective application of the Condition to pre-existing lineups would be inconsistent with the Commission's long-standing policy of imposing merger conditions only to confirm transaction-specific benefits or remedy transaction-specific harms. It would also be impossible to square with the text of the Order and Bloomberg's advocacy before the Commission—in which Bloomberg repeatedly characterized "neighborhooding" of news channels as a practice in which Comcast and other cable operators *had not yet engaged*, but in which Bloomberg expected they *would engage in the future*.

**FACTUAL BACKGROUND**

**A. Carriage of BTV on Comcast Systems**

10. In [REDACTED], Comcast signed an affiliation agreement with Bloomberg ([REDACTED] the “Affiliation Agreement”) to distribute BTV on its cable systems. [REDACTED]

11. In the five years since, Comcast has expanded BTV’s distribution such that Comcast now distributes BTV to [REDACTED] subscribers, despite having had [REDACTED] [REDACTED]<sup>9</sup> Bloomberg focuses its analysis on the 26 of the country’s top 35 DMAs where Comcast owns and operates cable systems (the “Relevant DMAs”). In these DMAs, [REDACTED] percent of Comcast basic subscribers receive BTV—a far higher level of penetration than the [REDACTED] percent that BTV achieves across all subscribers of basic multichannel video programming distributor (“MVPD”) service nationwide.<sup>10</sup> Comcast has continued to expand Bloomberg’s distribution since the Transaction was announced in December

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<sup>7</sup> See Affiliation and Distribution Agreement by and between Bloomberg L.P. and Comcast Cable Communications, LLC [REDACTED]  
[REDACTED]  
[REDACTED]  
<sup>9</sup> See Declaration of Jennifer Gaiski, July 26, 2011 (“Gaiski Decl.”) (attached as Ex. 2) ¶ 6.

[REDACTED]  
[REDACTED]

<sup>9</sup> Ex. 2, Gaiski Decl. ¶¶ 6, 9.

<sup>10</sup> Ex. 3, Egan Decl. ¶ 9.

2009.<sup>11</sup> In most systems, Comcast voluntarily carries BTV on the same service level as CNBC.<sup>12</sup> Bloomberg therefore does not and could not allege that the Transaction has led to a material loss of carriage or other adverse result for BTV.<sup>13</sup>

**B. BTV's Channel Placement on Comcast Systems**

12. The Complaint also does not allege that BTV's channel position relative to other news networks on Comcast's channel lineups has suffered since the closing of the Transaction. BTV's placement on Comcast's channel lineups has remained largely unchanged since BTV was launched broadly across Comcast's footprint in 2006. Because Comcast at that time did not own an interest in CNBC or in any of the other news networks to which Bloomberg compares BTV, Comcast's placement of BTV relative to those networks necessarily did not (and does not) reflect any desire by Comcast to benefit CNBC at BTV's expense.<sup>14</sup>

13. Instead, as is the case with most networks, the channel positions at which Comcast's cable systems launched BTV were determined by the local systems themselves, based on the same factors that typically affect the channel placement of all networks.<sup>15</sup>

14. *Channel Availability:* BTV was initially launched on D1 (a digital level of service), and local cable systems generally avoid assigning digital networks channel positions in

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<sup>11</sup> Letter from Arthur R. Block, Esq., Senior Vice President, General Counsel and Secretary, Comcast Corporation, to David Boies, Esq., Boies, Schiller & Flexner LLP, and Stephen Diaz Gavin, Esq., Patton Boggs LLP, counsel to Bloomberg L.P., dated June 6, 2011 (the "Block Letter") (attached as Ex. 1, Smit Decl. Attachment C), at 1.

<sup>12</sup> *Id.*; see also Ex. 2, Gaiski Decl. ¶ 7.

<sup>13</sup> See generally Compl.

<sup>14</sup> Ex. 2, Gaiski Decl. ¶ 10.

<sup>15</sup> See Ex. 2, Gaiski Decl. ¶¶ 6, 10-18.

the 1–99 range, the portion of a system’s lineup available to analog subscribers.<sup>16</sup> Locating digital networks in channel positions below 100 would degrade the experience of customers with analog levels of service, who would lose one of their channels and instead see a blank screen.<sup>17</sup>

15. *Disruption Considerations:* By 2006, when Comcast launched BTV in many systems, networks that had launched years or decades earlier already occupied most of the channel positions near news networks in the 1–99 channel range. Many of the most established and popular networks are located in this range, and consumers have come to expect them at a particular channel position. As discussed in Section II, below, displacing these networks from their established channel positions can trigger a disruptive, domino effect of channel relocations.<sup>18</sup> Accordingly, local cable systems generally avoid relocating these networks—even when other networks offer financial or other incentives to do so.<sup>19</sup>

16. *Broadcast:* Any effort to place BTV in the 1–99 range would have been further complicated by the presence of many broadcast channels that have “must-carry” rights (established by federal statute) to be carried in their off-air channel positions or other positions where they have had historical carriage.<sup>20</sup>

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<sup>16</sup> Ex. 2, Gaiski Decl. ¶ 13.

<sup>17</sup> Ex. 4, Egan Decl. ¶ 35; Ex. 2, Gaiski Decl. ¶ 13.

<sup>18</sup> Declaration of Jay Kreiling, July 26, 2011 (“Kreiling Decl.”) (attached as Ex. 3), ¶¶ 10–12.

<sup>19</sup> See, e.g., R. Thomas Umstead, *Does a Lower-Dial Slot Still Matter?*, Multichannel News, July 20, 2003 (attached as Ex. 23) (“[E]ven with strong economic or ad sales arguments, [Court TV executive vice president of affiliate relations Bob] Rose said very few operators today are willing to risk upsetting viewers by making wholesale channel lineup changes. ‘Someone has to move, and movement causes disruption and disruption means phones ring [within the system],’ he said.”).

<sup>20</sup> See 47 U.S.C. §§ 534(b)(6), 535(g)(5).

17. *Content Considerations:* Even if positions near news channels in the 1–99 channel range had been available in 2006, there was no compelling reason to group BTV with those channels. As Bloomberg itself concedes, BTV did not have similar content to and was not designed to appeal to the same audience as those networks.<sup>21</sup>

18. In Bloomberg’s words, BTV was “initially targeted to serve the narrow market of professional investors who were already clients of Bloomberg’s computer terminal service,” and BTV was not “redesigned to appeal to a much wider audience” until 2008.<sup>22</sup> BTV was targeted to a “small” audience,<sup>23</sup> and Bloomberg has conceded that, during this period, BTV was “a pretty ugly channel to watch.”<sup>24</sup> Indeed, Andrew Lack, CEO of Bloomberg’s multimedia group, has said that as recently as 2008, BTV “felt more like a start-up. There wasn’t an infrastructure here to produce a professional cable television channel.”<sup>25</sup>

19. In other words, in 2006, BTV was not a broad-based, consumer-focused news network like CNBC, MSNBC, CNN, Fox News Channel or the other networks identified in

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<sup>21</sup> See Compl. ¶ 2; Ex. 2, Gaiski Decl. ¶ 16.

<sup>22</sup> Compl. ¶ 2.

<sup>23</sup> Jade Garrett, *Bloomberg TV Adopts ‘Chosen Few’ Strategy*, Haymarket Publishing Servs. Ltd. Campaign, Mar. 26, 1999 (attached as Ex. 24).

<sup>24</sup> Tanzina Vega, *Bloomberg TV Pushes for Wider Audience*, N.Y. Times, June 21, 2011, at B2 (attached as Ex. 18) (quoting head of advertising sales for the Bloomberg Media Group).

<sup>25</sup> Stephanie Clifford & Julie Creswell, *At Bloomberg, Modest Strategy to Rule the World*, N.Y. Times, Nov. 15, 2009 (attached as Ex. 19), at B1; see also Jon Friedman, *Media Watch: Bloomberg TV Tries to Become a Player*, Dow Jones Newswires, Feb. 6, 2009 (attached as Ex. 21) (explaining that, as recently as 2009, BTV was characterized by industry sources as “lackluster,” “formulaic,” and “hopelessly dull and behind the times”).

paragraphs 27–55 of the Complaint. Thus, it would not necessarily have seemed logical to position BTV near those networks, even if such a grouping had otherwise been possible.<sup>26</sup>

20. Nevertheless, in many instances, BTV *has* been assigned to channel positions near other news and business news networks. Given BTV’s relatively recent launch and the historical constraints described above, BTV more frequently occupies a channel position near other recently launched networks, such as Fox Business Network (launched in 2007), rather than near networks such as CNN (launched in 1980) or CNBC (launched in 1989).<sup>27</sup>

**C. Channel Groupings on Comcast Systems**

21. Based on all the concerns described above—disruption of existing networks, the placement requirements of broadcast channels, and the need to avoid blank channel slots—Comcast has not reorganized its channel lineups to align news networks by genre in the analog 1–99 channel range.<sup>28</sup> Bloomberg has based its Complaint on groupings of four news channels that appear in the 1–99 range on certain Comcast headends.<sup>29</sup> These groupings, however, are not a recent phenomenon and, in some instances, predate Comcast’s ownership of the relevant cable systems.<sup>30</sup> And as Mr. Egan notes, any relevance that those four-network groupings had dissipated long ago as Comcast (and its predecessor providers) added increasing numbers of news networks to their systems at higher channel positions—which is undoubtedly why

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<sup>26</sup> Ex. 2, Gaiski Decl. ¶ 16.

<sup>27</sup> Ex. 2, Gaiski Decl. ¶ 17; *see generally* Declaration of Mark Israel, July 27, 2011 (“Israel Decl.”) (attached as Ex. 5).

<sup>28</sup> Ex. 2, Gaiski Decl. ¶ 23.

<sup>29</sup> *See* Compl. ¶ 75.

<sup>30</sup> Ex. 4, Egan Decl. ¶ 28.

Bloomberg itself failed to identify these groupings as “significant” during the merger proceeding.<sup>31</sup>

22. More recently, Comcast *has* experimented with neighborhooding in its “Master Channel Line-Up” or “MCLU,” which it introduced in 2010 on a handful of systems.<sup>32</sup> The MCLU groups sixteen news channels together—including, in each case, BTV.<sup>33</sup>

23. In implementing the MCLU, Comcast has sought to minimize customer disruption by limiting channel realignments to programming networks in channel positions 100 and above, which are typically digital and high-definition (“HD”) tiers of service.<sup>34</sup> Doing so has allowed Comcast to avoid realigning networks within the 1–99 channel range, where broadcasters’ must-carry rights preclude systematic realignment, and disruption to customers and networks resulting from channel moves would be far more substantial.<sup>35</sup>

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<sup>31</sup> Ex. 4, Egan Decl. ¶ 26.

<sup>32</sup> Fewer than 20,000 customers have access to SD lineups based upon the MCLU. *See* Ex. 2, Gaiski Decl. ¶ 21; Ex. 3, Kreiling Decl. ¶ 21. The MCLU is also available in a small number of HD lineups. *See* Ex. 2, Gaiski Decl. ¶ 21 ; Ex. 3, Kreiling Decl. ¶ 23. As discussed in n.70, for the purposes of this Answer, Comcast adopts Bloomberg’s approach of focusing on SD lineups.

<sup>33</sup> Ex. 2, Gaiski Decl. ¶ 24; Ex. 5, Israel Decl. Table A-III & n.1. Indeed, this is another reason that the Commission believed its Condition was narrowly tailored: in the neighborhooding Comcast was trialing and was thus most likely to expand immediately after the Transaction, *i.e.*, “now,” Comcast already included BTV in the “neighborhood.” It was thus entirely reasonable to require that it do so in other neighborhooding Comcast might undertake “in the future.”

<sup>34</sup> Specifically, Comcast aligned SD channels by genre in the 100–999 channel range and aligned HD channels in the 1000–1999 range by genre, paralleling the SD channels. *See* Ex. 3, Kreiling Decl. ¶ 22–24. Channels below 100 that are included in the genres are still located in their original slots but are also mapped to the genre lineup. Ex. 3, Kreiling Decl. ¶¶ 22, 24.

<sup>35</sup> Ex. 3, Kreiling Decl. ¶¶ 6, 22.

24. In addition, Comcast has aligned news channels only in digital channel ranges above channel 99 that are capable of accommodating additional news networks that might later emerge.<sup>36</sup> By aligning news channels in this manner, Comcast has ensured that news channels can be added to the grouping in the future without the disruption that Bloomberg’s overreaching definition would engender.

25. Outside those systems where it has implemented the MCLU, Comcast does not maintain news groupings similar to those that are found in the industry’s typical “news neighborhoods,” which generally include a grouping of 10–15 news channels and account for 60–70 percent of the news networks on a system.<sup>37</sup> The following table illustrates the differences between a typical grouping of news channels in Comcast channel lineups and the “news neighborhoods” maintained by other MVPDs.

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<sup>36</sup> *Id.* ¶ 6.

<sup>37</sup> Ex. 4, Egan Decl. ¶¶ 16, 19. According to Tribune Media Services data, of the [REDACTED] Comcast headends in the Relevant DMAs that carry BTV, only [REDACTED] headends place [REDACTED] percent or more of the headend’s news channels into a single grouping. Ex. 5, Israel Decl. Table A-III. Of these [REDACTED], [REDACTED] are headends that have participated in the MCLU trial or that otherwise carry BTV in the relevant grouping. *Id.* Table A-III & n.1 The remaining {{8}} headends reflect legacy groupings that carry between 3 and 11 news channels in total—well below the 15–16 news channels that exist on a typical Comcast headend carrying BTV. *Id.*

**Table 1: Grouping of News Channels in Comcast Channel Lineup and News Neighborhoods in Lineups of Other Major MVPDs.**

Comcast		verizon		AT&T U-verse		Insight		DIRECTV	
Channel	Network	Channel	Network	Channel	Network	Channel	Network	Channel	Network
2	NWCN	3	CT Pub. Aff.	189	Current TV	2	CN2	202	CNN
23 T	V Washingt.	49	WeatherSc. L.	202	CNN	193 W	KLEDT3	204 HL	N
24 C-	SPAN	100	CNN	203	HLN 402		ICN6	350	C-SPAN
25 C-	SPAN 2	101	HLN	205	CNN Int'l	406	Fox News	351	C-SPAN 2
44	CNN	102	CNBC	210	Fox News	407	CNN	352	DirecTV News
45	HLN	103	MSNBC	211	Fox Business	409	HLN	353	Bloomberg
46	CNBC	104	Bloomberg	215	MSNBC 411		Bloomberg	355	CNBC
47	MSNBC	105	CNN Int'l	216	CNBC 412		CNBC	356	MSNBC
48	Fox News	106	CNBC World	217	CNBC World	414	MSNBC	357	CNBC World
78 W	eather C.	107	BBC World	222	Bloomberg 415		Fox Business	358	Current TV
98 KCPQDT	2	108	ABC News	225	Weather C.	430	Weather C.	359	Fox Business
101 W	eatherSc. L.	109	C-SPAN	230	C-SPAN 432		WCPODT2	360	Fox News HD
125 Cur	rent TV	110	C-SPAN2	231	C-SPAN 2	445	C-SPAN	362	Weather C.
128 Bloo	mberg	111	C-SPAN3	232	C-SPAN 3	446	C-SPAN 2	375	Link TV
130 Fox	Business	117	Fox Business	243	ABC News	447	C-SPAN 3	2007	NDTV2
150 C-	SPAN 3	118	Fox News					2183	MHZWV
		119	Weather C.						
		192	Current TV						
		473	WLIWDT3						

	News Channel in Grouping
	News Channel outside of Grouping

Source: Tribune Media Services (June 2011); Israel Decl. Tables A-IV - A-X.

**D. Chronology of Comcast-Bloomberg Channel Relocation Discussions and Bloomberg’s Advocacy Before the Commission**

**1. Pre-Comcast-NBCUniversal Order**

26. Comcast entered into discussions with Bloomberg about relocating BTV to different channel positions in certain major markets beginning in 2010.<sup>38</sup> Contrary to Bloomberg’s claim that those negotiations “were completely unproductive,”<sup>39</sup> Comcast was a willing participant in these discussions, making a number of counteroffers in response to

<sup>38</sup> Ex. 2, Gaiski Decl. ¶ 18.

<sup>39</sup> Compl. Ex. D (Declaration of Daniel Doctoroff) ¶ 15; Compl. Ex. E (Declaration of Andrew Lack) ¶ 19.

Bloomberg's various demands.<sup>40</sup> Bloomberg chose to abandon these negotiations and elected instead to attempt to exploit the regulatory process to achieve its commercial objectives.

27. As an active participant in the merger proceeding, Bloomberg repeatedly advocated that the Commission should condition its approval of the Transaction on a requirement that Comcast affirmatively *create* "neighborhoods" in which BTV would be aligned "with CNBC and similar news programming."<sup>41</sup> As discussed below, the premise of this advocacy was that Comcast did *not* "neighborhood" news channels, but that the Commission should *require* it to do so. This is, of course, now at odds with the premise of the Complaint, which is that news "neighborhoods" are pervasive on Comcast's channel lineups.

28. In the course of its advocacy, Bloomberg made clear to the Commission that "neighborhooding" news channels referred to the practice of MVPDs "such as DirecTV, Dish Network, FiOS, and U-Verse," which clustered 10 to 15 news channels in adjacent channel positions.<sup>42</sup> Bloomberg noted that cable operators had yet to "neighborhood" news channels, but

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<sup>40</sup> Ex. 2, Gaiski Decl. ¶ 18.

<sup>41</sup> Petition to Deny of Bloomberg L.P., MB Docket No. 10-56 (June 21, 2010) ("Petition to Deny of Bloomberg L.P.") (relevant excerpts attached as Ex. 8), at 7; Letter from Matthew B. Berry, Esq., Patton Boggs LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Commc'ns Comm., MB Docket No. 10-56 (Dec. 10, 2010) ("Dec. 10 *Ex Parte*") (attached as Ex. 12) (stating that Bloomberg supported a condition requiring Comcast to *create* a business news neighborhood and would also "support a condition requiring the *creation* of a broader news neighborhood where news channels would be located on contiguous and adjacent channels positions" (emphasis added)).

<sup>42</sup> Ex. 8, Petition to Deny of Bloomberg L.P. at 29; *see also* Testimony of Gregory Babyak, Head of Government Relations, Bloomberg, Before the Senate Committee on Commerce, Science & Transportation, Mar. 25, 2010 ("Babyak Testimony") (attached as Ex. 7), at 2 (explaining that "[n]eighborhooding" refers to an industry practice of putting *all* program channels in the same genre adjacent to one another in the channel line-up" and referring to the practices of DirecTV, Dish Network, Verizon and AT&T) (emphasis added).

that it “*expected* [them] to adopt neighborhooding as they transition to digital technology.”<sup>43</sup> As evidence of this incipient “trend,” Bloomberg cited systems in North and South Carolina and Wisconsin, where Time Warner Cable had likewise placed 14 news and business news channels in adjacent channel positions.<sup>44</sup>

29. When the Commission was not persuaded to mandate affirmative neighborhooding, Bloomberg revised its advocacy at the eleventh hour. In December 2010 and January 2011, Bloomberg proposed a condition providing that, if Comcast carried news channels in a neighborhood, it would have to include all independent news channels in that neighborhood.<sup>45</sup> In doing so, Bloomberg sought to redefine a news “neighborhood” as “a block of channels including at least *three* news channels located within five contiguous and adjacent channel positions,”<sup>46</sup> and it relatedly suggested that the new obligation would extend to multiple news “neighborhoods” on a cable system.<sup>47</sup>

30. The Commission ultimately “decline[d] to adopt a requirement that Comcast affirmatively undertake neighborhooding” in its Order.<sup>48</sup> In addition, while adopting a condition similar to Bloomberg’s later suggestion, the Commission rejected the proposals to redefine a

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<sup>43</sup> Ex. 8, Petition to Deny of Bloomberg L.P. at 29 (emphasis added).

<sup>44</sup> *Id.* at 29 & n.97; Ex. 5, Israel Decl. Table A-V.

<sup>45</sup> See Letter from Matthew B. Berry, Esq., Patton Boggs LLP, Counsel to Bloomberg, to Marlene H. Dortch, Secretary, Federal Commc’ns Comm., MB Docket No. 10-56 (Dec. 20, 2010) (“Dec. 20 *Ex Parte*”) (attached as Ex. 13); Letter from Markham C. Erickson, Holch & Erickson LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Commc’ns Comm., MB Docket No. 10-56 (Jan. 19, 2011) (“Jan. 19 *Ex Parte*”) (attached as Ex. 16).

<sup>46</sup> Ex. 13, Dec. 20 *Ex Parte* (emphasis supplied).

<sup>47</sup> Ex. 16, Jan. 19 *Ex Parte*.

<sup>48</sup> Order, 26 FCC Rcd at 4287 ¶ 122.

news “neighborhood” as three news channels within five channel positions and to incorporate language contemplating multiple “neighborhoods.” Instead, the Commission adopted a “narrowly tailored” condition that would take effect only “if Comcast now or in the future carries news and/or business channels in a neighborhood, defined as placing a *significant* number or percentage of news and/or business news channels substantially adjacent to one another.” Further, the Condition envisioned only a single neighborhood, requiring Comcast in that event to “carry all independent news and business news channels in *that neighborhood*.”<sup>49</sup>

## 2. Post-Comcast-NBCUniversal Order

31. Shortly after the issuance of the Order, Bloomberg contacted Comcast to demand “compliance” with the Condition.<sup>50</sup> In making this demand, Bloomberg purported to discern “news neighborhoods” on the same channel lineups where it had previously argued that Comcast did not neighborhood. Notably, Bloomberg did not allege that Comcast had made any changes to these lineups in the interim that would warrant this dramatic recharacterization. Comcast contested Bloomberg’s revisionist history and its view that the Condition called for wholesale reorganization of long-standing, pre-Transaction channel lineups, but expressed its willingness to engage in negotiations with Bloomberg to explore an amicable solution.<sup>51</sup>

32. In the parties’ last discussion on April 4, 2011, Neil Smit, President of Comcast Cable and Executive Vice President of Comcast Corporation, reiterated Comcast’s interest in

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<sup>49</sup> Order, 26 FCC Rcd at 4287–88 ¶122 (emphasis added). The full condition reads as follows: “[I]f 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.”

<sup>50</sup> Declaration of Neil Smit, July 25, 2011 (“Smit Decl.”) (attached as Ex. 1), ¶ 4.

<sup>51</sup> *Id.* ¶ 7.

pursuing commercial discussions with Bloomberg.<sup>52</sup> Mr. Lack responded with a demand that Comcast implement Bloomberg's channel placement repositioning demands in their entirety.<sup>53</sup> Daniel Doctoroff, President of Bloomberg, added that Bloomberg had spent "a lot of time and money" on the FCC process, and it expected compliance with its interpretation of the Order.<sup>54</sup>

33. Neither Comcast nor its counsel was contacted by Bloomberg again (even though Mr. Smit had provided contact information for Comcast's counsel, as Mr. Doctoroff had requested during the April 4 call), until Bloomberg's counsel sent a letter on May 26, 2011, indicating its intent to file a complaint. Comcast responded on June 6, 2011, and again offered to engage in negotiations.<sup>55</sup> Bloomberg filed its Complaint on June 13, 2011.

#### **LEGAL STANDARDS**

34. In resolving disputes over the meaning of the Order, the Bureau should interpret the Memorandum Opinion and Order as a whole in conjunction with the record on which it was entered. The U.S. Supreme Court, in construing its own prior opinions, has repeatedly held that they should be construed as a whole and in light of the records on which they were based.<sup>56</sup>

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<sup>52</sup> *Id.* ¶ 7.

<sup>53</sup> *Id.* ¶ 7.

<sup>54</sup> *Id.* ¶ 7.

<sup>55</sup> Ex. 1, Smit Decl. Attachment C, Block Letter at 5.

<sup>56</sup> *See, e.g., Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363 (2006) (stating that "it is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used" (internal quotation marks omitted)) (quoting *Cohens v. Virginia*, 19 U.S. 264 (1821)).

“Such a rule also properly applies to interpretations of agency orders,” such as the Order, “especially where [as here] the order itself details the background against which it was passed.”<sup>57</sup>

35. In construing the Condition, the Bureau must also construe its constituent terms in a manner consistent with the Commission’s stated objectives in imposing the Condition<sup>58</sup> and with Congress’s objectives in authorizing the Commission to impose and enforce conditions—namely to confirm transaction-specific benefits or remedy transaction-specific harms.<sup>59</sup> As the complainant, Bloomberg bears the burden of persuasion.<sup>60</sup>

36. Moreover, the Bureau’s responsibility to define the Condition cannot be driven by Bloomberg’s self-serving interests. The Condition will affect Comcast’s customers and numerous cable networks for at least seven years—and longer, given that any repositioned lineups will likely persist for many years. It also does not represent a Bloomberg-specific remedy, and the Bureau must therefore interpret the Condition in a manner that makes sense not

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<sup>57</sup> *Global NAPs, Inc. v. Verizon New Eng., Inc.*, 444 F.3d 59, 73 (1st Cir. 2006) (citing *Cent. Va. Cmty. Coll.*, 546 U.S. 356); *see, e.g., Qwest Corp. v. Scott*, 380 F.3d 367, 373–74 (8th Cir. 2004) (“The FCC’s statement . . . is susceptible of a broader interpretation if plucked out of context, but we conclude that when the [FCC order] is read as a whole, the [FCC’s] expressed intent to preempt state regulation does not extend to performance measurements and standards.”).

<sup>58</sup> *See, e.g., In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, 14 FCC Rcd 16459, 16487 ¶ 50 (1999).

<sup>59</sup> *See* 47 U.S.C. § 303(r); Order, 26 FCC Rcd at 4249 ¶ 25 (stating that, in light of section 303(r), the Commission has “imposed conditions to confirm specific benefits or remedy specific harms *likely to arise from transactions*” (emphasis supplied)).

<sup>60</sup> This burden allocation reflects the usual practice of requiring that the party seeking relief from a federal agency bear the burden of proving that the violations occurred. 5 U.S.C. § 556(d); *see, e.g., Schaffer v. Weast*, 546 U.S. 49, 56–57 (2005).

only for the instant Complaint, but for the full term and for all customers and networks whose interests it will affect.

37. Finally, the remedy Bloomberg is seeking in this case would significantly burden Comcast's editorial decision-making regarding channel placement. Specifically, Bloomberg would have the Commission substitute its judgment for Comcast's about which channels are "news" channels, what types of groupings are "significant" genre groupings for Comcast's viewers, and whether and to what extent Comcast *should* neighborhood news networks on its own systems. But the Bureau should proceed cautiously in that regard.<sup>61</sup> The Supreme Court has made clear that "[c]able programmers and cable operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment."<sup>62</sup> This protection extends to the "exercis[e] [of] editorial discretion over which stations or programs to include in [the cable operator's] repertoire,"<sup>63</sup> and requires considerable deference to Comcast's editorial decisions.<sup>64</sup> Indeed, "the right to speak and the right to refrain

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<sup>61</sup> Cf. *In the Matter of TCR Sports Broad. Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable, Inc.*, 25 FCC Rcd 18099, 18106 ¶ 12 (2010) (finding that the Bureau failed to "give due credit to [Time Warner Cable]'s proffered reasons" that a challenged carriage decision "was a reasonable exercise of editorial discretion").

<sup>62</sup> *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) ("*Turner I*").

<sup>63</sup> *Id.* (quoting *Los Angeles v. Preferred Commc'ns, Inc.*, 473 U.S. 488, 494 (1986)).

<sup>64</sup> See, e.g., *FCC v. Midwest Video Corp.*, 440 U.S. 689, 708 (1979) ("[W]e are unable to ignore Congress' stern disapproval . . . of negation of the editorial discretion otherwise enjoyed by . . . cable operators . . ."); *Time Warner Entm't Co. v. FCC*, 240 F.3d 1126, 1135 (D.C. Cir. 2001) ("[W]e cannot see how the word unfair could plausibly apply to . . . legitimate, independent editorial choices . . ."); cf. *CBS, Inc. v. FCC*, 453 U.S. 367, 396 (1981) ("The Commission has stated that, in enforcing [Section 312(a)(7) of the Communications Act of 1934], it will provide leeway to broadcasters and not merely attempt *de novo* to determine the reasonableness of their judgments." (internal quotation marks omitted)).

from speaking are complementary components”<sup>65</sup> of the same liberty and, thus, governmental requirements mandating carriage must be subject to a “measure of heightened First Amendment scrutiny.”<sup>66</sup> Moreover, the Commission has recognized that “any attempt to distinguish between different types” of networks—which, as discussed below, arises as a result of Bloomberg’s effort to carve out many channels that Comcast treats as properly included in the universe of “news channels”—“is likely to raise Constitutional concerns.”<sup>67</sup>

38. In short, the Bureau must be certain that *any* action it requires here is narrowly tailored—as the Condition professes to be—to serve a compelling government interest.<sup>68</sup> The Bureau should accordingly act with caution in interpreting and applying this Condition, and should *minimize* the Condition’s inherent impact on Comcast’s protected speech—guidance that is at odds with Bloomberg’s aggressive, expansive application of the Condition.

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<sup>65</sup> See, e.g., *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

<sup>66</sup> *Turner I*, 512 U.S. at 641.

<sup>67</sup> *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition; Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket No. 07-29, 22 FCC Rcd 17791, 17840 ¶ 69 (2007).

<sup>68</sup> See *Riley v. Nat’l Fed’n of the Blind*, 487 U.S. 781, 800 (1988) (holding that the First Amendment prohibits the government from compelling speech “absent compelling necessity, and then, only by means precisely tailored”). Comcast does not contend that the Commission was without authority to adopt the Condition, but contends that Bloomberg’s proposed construction and application of the Condition would infringe on Comcast’s constitutionally protected editorial discretion. See Letter from Kathryn A. Zachem, Vice President, Regulatory and State Legislative Affairs, Comcast Corporation, *et al.* to Marlene H. Dortch, Secretary, Federal Commc’ns Comm., MB Docket 10-56 (Jan. 21, 2011).

**ARGUMENT****I. BLOOMBERG’S PROPOSED DEFINITION OF A NEIGHBORHOOD IS INCONSISTENT WITH THE CONDITION’S PLAIN LANGUAGE, INDUSTRY PRACTICE, THE RECORD BEFORE THE COMMISSION, AND THE COMMISSION’S INTENT**

39. The Complaint should be denied because Bloomberg’s claim that Comcast engages in widespread “neighborhooding” of news channels rests on the faulty premise that a news channel “neighborhood” may be found any time four news channels are located within five channel positions.<sup>69</sup> This position is untenable for the reasons discussed below.

**A. Four News Channels Constitute a Small Minority of the News Channels Available to Comcast Subscribers and Are Not a “Neighborhood” Based on Industry Practice**

40. The Order defines a news and/or business news “neighborhood” as a “significant number or percentage of news and/or business news channels substantially adjacent to one another in a system’s channel line-up.”<sup>70</sup> Four channels, however, constitute a small minority of the news channels that Comcast carries. Headends carrying BTV in the Relevant DMAs carry an average of between 15.4 and 24.5 unique news channels, depending on whether foreign-language news channels, sports news channels and HD channels are included.<sup>71</sup> Given the breadth and variety of news channels available to Comcast’s subscribers, four is not a “significant number or

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<sup>69</sup> Compl. ¶ 75.

<sup>70</sup> Order, 26 FCC Rcd at 4358 § III.2.

<sup>71</sup> Ex. 5, Israel Decl. ¶ 18. Unless otherwise stated, the statistics and other information provided in this Answer are based solely on SD lineups. This is consistent with the approach taken by Bloomberg in its submission. *See* Crawford Decl. ¶ 28 (“HD news feeds were omitted from the definition [of a ‘news channel’] because HD channels are a higher-quality product that largely replicate the content of standard definition feeds.”). Moreover, Comcast does not currently have a license to carry BTV’s HD signal, so there can be no basis for Bloomberg to seek to include BTV in an HD “neighborhood.” Comcast reserves its right to consider HD lineups separately in subsequent submissions.

percentage” even from a purely arithmetic standpoint, and certainly not when the broader implications of the Condition are considered.

41. Groupings of four news networks do not come close to constituting the type of 10–15 channel “news neighborhoods” that are found on the systems of those MVPDs that do group their news channels by genre. Four distributors—Verizon, AT&T, DirecTV, and Insight Communications<sup>72</sup>—typically carry news neighborhoods of 15, 14, 11 and 13 news channels on their respective channel lineups. As industry expert Michael Egan explains, these distributors, which set the industry standard for news neighborhooding, each place more than 70 percent of their total news channels in a “neighborhood” on 80 percent or more of their channel lineups.<sup>73</sup> Time Warner Cable likewise places more than 70 percent of news channels in a “neighborhood” on approximately 53 percent of its channel lineups, and Dish Network carries nearly 60 percent of news channels (10 of 19 news channels) in substantially adjacent channel positions on 100 percent of its channel lineups.<sup>74</sup> The remaining large MVPDs, including Comcast, have few channel lineups that cross even a 60 percent threshold, and thus clearly offer news neighborhoods on few, if any, of their systems.<sup>75</sup> As Mr. Egan concludes:

DirecTV, Verizon, AT&T U-Verse, and Insight have set the industry standard for news channels in a news neighborhood at 70% or more of all news channels in the lineup. These MVPDs have deployed news neighborhoods widely throughout their systems in the Relevant DMAs. Evaluated by that standard, TWC does so in

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<sup>72</sup> Insight Communications, like Time Warner Cable, introduced a channel lineup organized by themes in connection with its launch of revamped digital service. *See* Simon Applebaum, “Back Home Again, in Indiana 2.0,” CableFAX, Feb. 5, 2007 (attached as Ex. 22).

<sup>73</sup> Ex. 4, Egan Decl. ¶ 19; Ex. 5, Israel Decl. Table A-III. The channel lineups surveyed were those carrying BTV in the 26 of the top 35 DMAs in which Comcast operates. *Id.*

<sup>74</sup> Ex. 4, Egan Decl. ¶ 20.

<sup>75</sup> *Id.* ¶ 21.

about one-half of its cable systems. In total, these five MVPDs that extensively employ news neighborhooding comprise 32% of all multichannel subscribers in the Relevant DMAs. Quite clearly, the other MVPDs, most notably Comcast, offer news neighborhoods in few, if any, of their systems.<sup>76</sup>

42. Bloomberg counts Comcast's number of news channels differently from Comcast, as summarized above in paragraph 40. But even by Bloomberg's own estimates, Comcast headends carrying BTV in the Relevant DMAs carry eleven news channels on average, which means that a grouping of four news channels would account for only 36 percent of the news channels on a typical headend—or roughly *half* the 70 percent industry standard that Mr. Egan identifies for news channels in a neighborhood.

43. In any event, Bloomberg's calculations are based on inaccurate and unexplained channel classifications which understate the true number of news channels on Comcast's systems. Bloomberg disregards approximately 60 of the more than 100 national and regional news channels distributed across Comcast's footprint, and 5 to 10 news channels received, on average, by any individual Comcast customer. Specifically, Bloomberg asserts that Comcast's systems carry only 37 news channels in the Relevant DMAs, and that only 11 of these are available on average on any given headend carrying BTV.<sup>77</sup>

44. In order to depress artificially the number of news channels (and thereby inflate the supposed significance of four channels), Bloomberg excludes, among others, many news channels focused on weather from its analysis. The Commission has long recognized, however, that weather is an integral component of news programming—just as integral as the stock market reports that BTV airs. As the Commission has explained: “News includes reports dealing with

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<sup>76</sup> *Id.* ¶ 22.

<sup>77</sup> Compl. ¶ 64.

current local, national and international events, including weather and stock market reports . . . .”<sup>78</sup>

45. Bloomberg’s exclusion of weather-focused news channels from its analysis is also inconsistent with industry practice. The news “neighborhoods” that Bloomberg cited in its advocacy before the Commission—those of AT&T, Verizon, Dish Network, DirecTV and Time Warner Cable—all include weather-focused news channels.<sup>79</sup> The news “neighborhoods” in Comcast’s MCLU experiment likewise include news channels focusing on national and local weather, including The Weather Channel, Weatherscan Local, and a host of weather-focused broadcast multicast channels.<sup>80</sup>

46. Bloomberg’s exclusion of news channels focused on weather is also inconsistent with its own prior statements to the Commission, in which it stated that Comcast-NBCUniversal’s “news programming networks” would include “NBC News, MSNBC, CNBC, the Spanish-language Telemundo programming and the Weather Channel, as well as regional news channels such as New England Cable News.”<sup>81</sup>

47. Bloomberg also excludes from its analysis broadcast multicast channels that focus on news and public affairs. These channels squarely fit within the Commission’s definition of

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<sup>78</sup> *In the Matter of The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, MM Docket No. 83-670, 98 FCC 2d 1076, App. D § III.A ¶ 13 (1984).

<sup>79</sup> Ex. 4, Egan Decl. ¶ 15; Ex. 5, Israel Decl. Tables A–V – A–X.

<sup>80</sup> Ex. 5, Israel Decl. Table A–IV.

<sup>81</sup> Ex. 8, Petition to Deny of Bloomberg L.P., at 30; *see also id.* at 3 (listing the Weather Channel as one of several “major news outlets”); *id.* at 20 (identifying “the Weather Channel and regional news channels” as among Comcast’s “news and information” programming).

“news channels”: i.e., channels “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.”<sup>82</sup> For instance, news and public-affairs programming accounted for approximately three quarters of the programming carried by MHz Worldview multicast channels over a two-week period.<sup>83</sup> These and other multicast channels plainly “focus” on news and public affairs reporting and analysis, and Bloomberg’s categorical exclusion of these channels renders its analysis unreliable.<sup>84</sup>

48. Bloomberg also excludes all HD news channels from its analysis. HD news channels have separate channel positions and separate feeds, however, and neither the Condition nor the Order draws any distinction between SD and HD channels.<sup>85</sup> HD channels may, therefore, be appropriately considered in the universe of a system’s news channels. Notably, however, even if HD channels are not counted separately from their SD counterparts, four news networks is not a “significant” fraction of the over 100 SD news channels carried by Comcast in the Relevant DMAs, 15.4 of which are available on average on any given headend carrying BTV.<sup>86</sup>

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<sup>82</sup> Order, 26 FCC Rcd at 4288 ¶ 122 n.292; Egan Decl. Attachment A.

<sup>83</sup> Ex. 4, Egan Decl. Attachment A.

<sup>84</sup> Likewise, news, business and public affairs programming accounted for a preponderance of the programming carried by public television’s World multicast channels over a two-week period. *Id.* Again, Bloomberg excludes these channels from its analysis without explanation.

<sup>85</sup> Compl. ¶ 76; Crawford Decl. (Compl. Ex. F) ¶ 28.

<sup>86</sup> Israel Decl. ¶ 18. As noted, the analysis provided in this Answer generally focuses solely on SD lineups.

49. Ultimately, regardless how one counts (or miscounts) the news channels that Comcast carries, four news channels fall far short of any industry or common-sense standard for a news channel “neighborhood.”

**B. Bloomberg Relies Upon Inapposite Definitions of “Significant”**

50. Bloomberg argues that four news channels constitute a “significant” number—and therefore a news “neighborhood”—because clusters of four news channels are ““probably caused by something other than mere chance.””<sup>87</sup> This argument relies upon a definition of “significant” that the Commission plainly did not have in mind.

51. Bloomberg’s argument disregards the most obvious definitions of the word “significant”—*i.e.*, “having meaning” and “important”<sup>88</sup>—and the multidimensional analyses that they require.<sup>89</sup> In deciding whether a variable is “significant,” the D.C. Circuit has held that an agency should not confine itself to a “mathematical straitjacket.”<sup>90</sup> Whether a variable is “‘significant’ . . . should not be determined by a precise standard meted out . . . and mechanically applied.”<sup>91</sup> Instead, “it should be determined by a very factually-specific inquiry which takes

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<sup>87</sup> Compl. ¶ 76 (citing definitions 2.a and 2.b of “significant” from Merriam Webster’s Collegiate Dictionary 1091 (10th ed. 1995)).

<sup>88</sup> See *Northwest Ecosystem Alliance v. Norton*, 475 F.3d 1136, 1146 (9th Cir. 2007) (holding that the “commonly understood meaning” of the term “significant” is “important”). The Complaint relies on definitions of the term “significant” listed in Merriam Webster’s Collegiate Dictionary, see Compl. ¶ 76, but the same dictionary lists “having meaning” and “important” as more common definitions. See Merriam Webster’s Collegiate Dictionary 1091 (10th ed. 1995) (definitions 1 & 2.a of “significant”).

<sup>89</sup> See, e.g., *Michigan v. EPA*, 213 F.3d 663, 677 (D.C. Cir. 2000); *United States v. Lancaster*, 6 F.3d 208, 210 (4th Cir. 1983).

<sup>90</sup> *Michigan v. EPA*, 213 F.3d at 667 (quoting *Indus. Union Dep’t., AFL-CIO v. Am. Petrol. Inst.* (“Benzene”), 448 U.S. 607, 655 (1980) (plurality opinion)).

<sup>91</sup> *Lancaster*, 6 F.3d at 210.

into account a multitude of factors,”<sup>92</sup> including analysis and consideration of “economic and social implications.”<sup>93</sup>

52. In this case, the Bureau should assess the “significance” of a channel grouping in light of the Condition’s objective.<sup>94</sup> The Condition’s stated objective was to address the possibility of discriminatory behavior,<sup>95</sup> specifically, to address Bloomberg’s professed concern that Comcast would “neighborhood its channel line-up quickly to compete with other MVPDs,” but “strand BTV [or another independent news network] at a competitively disadvantageous location” where it might be overlooked.<sup>96</sup>

53. Given this objective, the assessment of “significance” must turn, in part, on whether customers, encountering a given number of news channels in adjacent channel positions, would assume that other news channels will not be found elsewhere on the system. Four news channels is decidedly not “significant” by this measure. Any reasonable customer, coming across a cluster of four news channels on Comcast’s systems, would surely know that many additional news channels may be found elsewhere on the lineup, given that Comcast’s systems typically carry four to five times that many news channels, depending on whether only SD news

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<sup>92</sup> *Id.*

<sup>93</sup> *Sierra Club v. EPA*, 540 F.2d 1114, 1122 (D.C. Cir. 1976) (noting that the term “‘significant’ . . . only has meaning when . . . economic and social implications are analyzed and considered”).

<sup>94</sup> *Cf. Rapanos v. United States*, 547 U.S. 715, 779 (2006) (Roberts, C.J., concurring) (holding that whether a nexus between wetlands and navigable waters is “significant” for purposes of a Clean Water Act analysis “must be assessed in terms of the statute’s goals and purposes”).

<sup>95</sup> Order, 26 FCC Rcd at 4288 ¶ 123.

<sup>96</sup> Ex. 8, Petition to Deny of Bloomberg L.P. at 7.

channels, or both SD and HD news channels, are considered.<sup>97</sup> That is even more true against the backdrop of the industry’s “neighborhooding” practice, which, as noted, tends to include groups of 10 channels or more.

54. *Second*, “significance” also must be assessed in light of the evidence before the Commission at the time the Condition was adopted.<sup>98</sup> As discussed in Section I.C below, Bloomberg *itself* introduced evidence indicating that news “neighborhoods” consist of 10–15 news channels. And the only evidence before the Commission concerning neighborhooding undertaken by Comcast concerned the MCLU, which has sixteen news channels.

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<sup>97</sup> Similarly, forming news channel “neighborhoods” (as Bloomberg now defines that term) would not help Comcast “compete with other MVPDs,” Ex. 8, Petition to Deny of Bloomberg L.P. at 31. As industry expert Michael Egan explains, channel “neighborhoods” may help an MVPD compete in one of two ways. First, a neighborhood may enhance the viewing experience of an MVPD’s customers by more easily allowing them to remember, when faced with hundreds of channel choices, where to go “on the dial” for the genre that they are seeking at the moment, and then, once there, to “surf” within the genre easily. Ex. 4, Egan Decl. ¶ 12. Second, a neighborhood may improve an MVPD’s ability to communicate with customers by allowing it to portray and describe, in simple and easily understood images and messages, the programming that its service offers. *Id.* ¶ 12 & Attachment D. To serve either purpose, however, a news “neighborhood” must contain at least a significant majority of news channels, and a truly effective neighborhood may well require inclusion of two-thirds or more of a lineup’s news channels. *Id.* ¶ 13. Given that the typical Comcast channel lineup contains more than 15 SD news channels, Bloomberg’s four-network definition falls far short of satisfying the criteria for an effective news neighborhood.

<sup>98</sup> The importance of context follows from both legal principle and common sense. *See, e.g., Paragon Solutions, LLC v. Timex Corp.*, 566 F.3d 1075, 1090–91 (Fed. Cir. 2009) (observing that “[a] thirty-second delay might be insignificant in some contexts—including ‘walking,’ ‘climbing,’ and ‘snowshoeing,’ . . . [but] highly significant in other contexts—for example, short- and middle-distance running or skiing”).

55. *Third*, “significance” can and should be assessed against the industry’s general practices.<sup>99</sup> As noted above, groupings of four networks do not come close to constituting a “neighborhood” based on a comparison to other providers’ practices, especially given that this is nowhere near the “70 percent of news channels” standard that is most common among neighborhooding MVPDs. That is no doubt why Bloomberg itself did not identify Comcast as having “news neighborhoods” in its initial advocacy—and that initial assessment was correct.

56. *Finally*, in determining whether a number of news channels is “significant,” the Bureau should consider the implications of its determination for consumers, for networks, and for Comcast. Notably, the D.C. Circuit has explained that, “[i]n some contexts, ‘significant’ begs a consideration of costs.”<sup>100</sup> The Commission’s use of the term “significant” in a “narrowly tailored” condition was plainly designed to limit the costs, burdens and disruption that might have resulted from a broader condition—like the three-network definition Bloomberg previously advocated and, by extension, the four-network definition it now proposes. As discussed in Section II, below, considerations of costs, burden and disruption confirm that four news networks cannot be a “significant number or percentage” of all news networks.

**C. The Record Before the Commission Confirms that Four News Channels Does Not Constitute a “Neighborhood”**

57. Bloomberg’s current position that a “neighborhood” may comprise as few as four news channels contradicts Bloomberg’s own prior advocacy to the Commission. During the

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<sup>99</sup> See generally *Colorado Interstate Gas Co. v. F.E.R.C.*, 599 F.3d 698, 703 (D.C. Cir. 2010) (“Relying on the trade usage of the term is appropriate, as construing terms in the light of their commonly understood meaning is a hallmark of reasonable interpretation.”).

<sup>100</sup> *Michigan v. EPA*, 213 F.3d at 677. See *id.* at 677-78 (citing Stephen G. Breyer, Richard B. Stewart, Cass R. Sunstein & Matthew L. Spitzer, *Administrative Law & Regulatory Policy* 65 (4th ed. 1999) (“Can an agency sensibly decide whether a risk is ‘significant’ without also examining the cost of eliminating it?”)).

proceeding in which it advocated and the Commission adopted the Condition, Bloomberg made clear that a news channel “neighborhood” must include many more channels. It cannot suggest that the term means something else entirely now, when it seeks to enforce the Condition.

58. As noted above, Bloomberg told the Commission that “neighborhooding” was illustrated by the news groupings found on the lineups of AT&T, Verizon, Dish Network, and DirecTV, consisting of between 10 and 15 news channels.<sup>101</sup> As also noted, Bloomberg stated that cable operators, as of June 2010, did *not* carry news channel “neighborhoods,” though it expected they would as they “*transition to digital technology.*”<sup>102</sup> Its one example of this new cable neighborhooding was Time Warner’s 14-channel digital news neighborhood trial.<sup>103</sup>

59. Bloomberg’s current position that four news channels make a “neighborhood” contradicts these statements. Among other things, if a “neighborhood” consists of as few as four networks, Comcast and other cable operators currently carry news channel “neighborhoods” on a majority of their channel lineups. Indeed, under Bloomberg’s present definition, roughly two-thirds of Comcast’s channel lineups contain a news channel “neighborhood.”<sup>104</sup>

60. Moreover, these four-channel “neighborhoods” long predate Comcast’s and other cable operators’ “transition to digital technology.” Indeed, some these clusters have remained

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<sup>101</sup> On Verizon FIOS, the news neighborhood consists of 15 consecutive news networks; on AT&T U-Verse, 14 news networks within 15 channels; on Dish Network, 10 news networks within 11 channels; and on DirecTV, 10 news networks within 12 channels. *See* Ex. 4, Egan Decl. ¶ 15; Ex. 5, Israel Decl. Table A–VI ; *see also* Table 1 at 15 *supra*.

<sup>102</sup> Ex. 8, Petition to Deny of Bloomberg L.P. at 29 (emphases added).

<sup>103</sup> *See id.* at 29 n.97; Ex. 5, Israel Decl. Table A–V. The Commission framed the Condition to cover Comcast’s placement of news channels in a “neighborhood,” whether that placement occurred “now,” *i.e.*, as part of Comcast’s pending digital transition, or “in the future.” Order, 26 FCC Rcd at 4358, App. A § III.2.

<sup>104</sup> *See* Crawford Decl. ¶ 40.

unchanged for well over a decade, and represent artifacts of channel-placement decisions made in the analog era.<sup>105</sup>

61. In the end, Bloomberg’s Complaint represents a transparent bait-and-switch: Bloomberg sought to convince the Commission to *adopt* the Condition based on evidence of broad news groupings that are seldom seen on cable systems and which Bloomberg specifically conceded were not present on Comcast systems. But Bloomberg now attempts to have the Commission *apply* the same condition in a manner that would sweep in small news channel groupings that have been found for years on hundreds of Comcast systems. It would be inappropriate to change the rules of the game—and the costs and reach of the Condition—midstream.

**D. Bloomberg’s Position Leads to Two or More Neighborhoods on Many Comcast Systems, an Absurd Result Not Contemplated by the Commission**

62. Bloomberg’s position that four news channels in any block of five adjacent channel positions constitutes a “neighborhood”<sup>106</sup> also leads to absurd and incoherent results. If Bloomberg’s position were accepted, nearly *two-thirds* of Comcast’s channel lineups in the Relevant DMAs that carry BTV would have not one, but several standard definition “news neighborhoods,” each with small groupings of news channels.<sup>107</sup> The concept of multiple standard definition “neighborhoods” is fundamentally at odds with the concept of “neighborhooding”—placing all (or at least most) channels of a kind in a *single* location for viewers to more easily access. The fact that Comcast’s channel lineups have multiple news

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<sup>105</sup> See Egan Decl. ¶ 28.

<sup>106</sup> See Compl. § VIII(d).

<sup>107</sup> See Ex. 5, Israel Decl. Tables I & II.

neighborhoods by Bloomberg’s definition is strong evidence that Bloomberg’s definition is fatally flawed.

63. Moreover, under this approach, BTV would *already* be in an SD news “neighborhood” on many of these channel lineups, ordinarily with more recently launched news and business news networks such as Fox Business Network.<sup>108</sup> For example, Bloomberg has demanded that it be included in a news “neighborhood” that it claims exists in the Washington, DC DMA (Montgomery County, MD) lineup.<sup>109</sup> As Table 2 shows, this “neighborhood” consists of CNBC (60), MSNBC (61), CNN (62), and CNN Headline News (63). Yet, using its own definition, Bloomberg is *already* included in a news “neighborhood” elsewhere in the same channel lineup: Bloomberg (103), C-SPAN2 (104), C-SPAN3 (105) and Fox Business (106).

64. Similarly, Bloomberg has demanded that it be included in a four-channel “neighborhood” in the Philadelphia (North/West/Northwest Philadelphia) lineup. As Table 2 shows, this four-within-five “neighborhood” consists of CNN (26), Headline News (27), MSNBC (28) and CNBC (29). Yet, if Bloomberg’s own definition is applied, the same channel lineup already includes BTV in a four-within-five “neighborhood”: BTV (103), C-SPAN3 (105), Fox Business Network (106) and Current TV (107).<sup>110</sup>

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<sup>108</sup> *See id.* ¶ Table II.

<sup>109</sup> *See* Ex. 1, Smit Decl. Attachment A.

<sup>110</sup> While Current TV is not a typical “news channel,” it currently appears to meet the Commission’s broad definition based on its public affairs programming. In light of its announced plans, however, Current TV may soon evolve into a channel that no longer qualifies under *any* definition of a “news channel.” *See* Ex. 4, Egan Decl. ¶¶ \_\_. Current TV’s evolution generally illustrates the complexity of applying the Condition and labeling channels. *See id.* ¶ 40. Bloomberg simply excludes Current TV from its news channel analysis without explanation. (In any event, Current TV is not an “independent” channel, given Comcast’s ownership interest, and thus is ineligible to invoke the Condition.)

**Table 2: News Channel "Neighborhoods" in Washington, DC and Philadelphia DMAs.**  
**Washington, DC DMA**  
**Montgomery County, MD**

Channel	Network
60	CNBC
61	MSNBC
62	CNN
63	CNN Headline News
64–96	(other channels)
97	(blank)
98	The Weather Channel
99–100	(blank)
101	WeatherScan Local
102	(non-news)
103	Bloomberg TV
104	C-SPAN2
105	C-SPAN3
106	Fox Business Network
107	Current TV

**Philadelphia DMA**  
**(North/West/Northwest Philadelphia)**

Channel	Network
26	CNN
27	CNN Headline News
28	MSNBC
29	CNBC
30–100	(other channels)
101	WeatherScan Local
102	(non-news)
103	Bloomberg Television
104	(blank)
105	C-SPAN3
106	Fox Business Network
107	Current TV

Source: Tribune Media Services (2011)

65. There are many more instances in which Bloomberg demands that it be repositioned despite already residing in a four-channel “neighborhood.” Of the [REDACTED] Comcast headends (in the Relevant DMAs) that carry BTV and allegedly contain a four-channel news “neighborhood,” nearly [REDACTED] *already include* BTV in a grouping that qualifies as a news “neighborhood” by Bloomberg’s definition.<sup>111</sup>

66. The reality, then, is that on many Comcast systems, Bloomberg is not asking that BTV be included in “a neighborhood,” but instead is seeking to compel Comcast to move BTV from one “neighborhood” into another that it prefers—or perhaps to be included in *both* neighborhoods (or even three, if HD “neighborhoods” are considered). The Condition and the Order were not designed to facilitate such cherry-picking. Nor can there be a compelling,

<sup>111</sup> Ex. 5, Israel Decl. Table II.

constitutionally sound government interest in forcing Comcast to provide Bloomberg with carriage at *multiple* locations on Comcast’s systems.<sup>112</sup>

67. Furthermore, the language of the Condition contemplates *one* news neighborhood on a system (or perhaps one SD and one HD neighborhood, to accommodate channels of either type). By its terms, the Condition is triggered only if Comcast places “news *and/or* business news channels *in a neighborhood*.”<sup>113</sup> When triggered, Comcast is required to carry all independent news and business news channels (of the relevant signal type) “*in that neighborhood*.”<sup>114</sup> In articulating this Condition, the Commission did not use the plural form “neighborhoods,” nor did it use language such as “any,” “each,” “every,” or “such” that could suggest the possibility of multiple neighborhoods. The Order itself similarly refers only to “a neighborhood” or “that neighborhood,” omitting any plural language.<sup>115</sup>

68. The Commission’s choice of the singular (“a neighborhood”) was intentional. As noted above, Bloomberg expressly proposed language that envisioned multiple news neighborhoods, but the Commission declined to adopt those proposals. Most notably, on January 18, 2011, the day the Commission adopted the Order, Bloomberg proposed the following “Change to Condition Language”: “Comcast must carry all independent news and business news

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<sup>112</sup> See *supra* ¶¶ 36–37.

<sup>113</sup> Order, 26 FCC Rcd at 4358, App. A § III.2 (emphasis supplied).

<sup>114</sup> *Id.* (emphasis supplied).

<sup>115</sup> While the word “neighborhoods” does appear in the Order, it is used as a verb, not a noun. *Id.* at 4241 ¶ 4 (stating that, “if Comcast ‘neighborhoods’ its news (including business news) channels, it must include all unaffiliated news (or business news) channels in that neighborhood”).

channels in that AND ALL SUCH *neighborhoods*.”<sup>116</sup> The Commission, of course, did not make that change.<sup>117</sup>

69. In short, the Commission deliberately crafted the Condition to apply to a single news neighborhood, not multiple news neighborhoods. And this, in turn, is consistent with an understanding that any Comcast news “neighborhood” would be based on or at least similar to the 16-channel MCLU, and thus include a significant group of channels that would render the prospect of multiple neighborhoods largely irrelevant.<sup>118</sup>

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70. In sum, the Commission, when it adopted the Condition, understood the “neighborhooding” of news channels to include 10 to 15 news channels—based on Bloomberg’s own advocacy, and based on Comcast’s MCLU. And outside a small number of systems that have moved to an MCLU (and that include BTV in the news genre lineup), Comcast has not clustered news channels that way. Furthermore, based on the plain record, the Commission’s

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<sup>116</sup> Ex. 16, Jan. 19 *Ex Parte* (emphasis supplied). The words “AND ALL SUCH” appear in capital letters in the Jan. 19 *Ex Parte*. *Id.*

<sup>117</sup> Nor did the Commission adopt similar language proposed by Bloomberg in *ex parte* presentations made on January 14 and 16, 2011. As with Bloomberg’s language from January 18, Bloomberg’s January 14 and 16 proposals contained language that would encompass multiple news neighborhoods. On January 14, for instance, Bloomberg proposed the following condition language: “Comcast must carry all independent news and/or business news channels on contiguous adjacent channels to, and on the same tier as, CNBC *wherever* CNBC is carried by Comcast . . . .” On January 16, Bloomberg proposed: “Comcast must carry all independent news and business news channels in *every such* neighborhood . . . .” See Letter from Markham C. Erickson, Holch & Erickson LLP, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Commc’ns Comm, MB Docket No. 10-56 (Jan. 18, 2011) (“Jan. 18 *Ex Parte*”) (attached as Ex. 14) (emphasis supplied).

<sup>118</sup> If the condition is understood to apply to multiple neighborhoods, the Commission must provide guidance on how Comcast must comply with the requirements, which would raise a variety of challenges. See Section I.D.

reference to a “significant” number of news channels cannot be understood to refer to groupings as small as four channels—a number not “significant” even on its face given the number of news channels Comcast carries or that other MVPDs typically carry in industry news neighborhoods. Bloomberg’s Complaint must therefore be denied.

**II. BLOOMBERG’S INTERPRETATION OF THE ORDER IS INCONSISTENT WITH THE COMMISSION’S INTENT TO MINIMIZE DISRUPTIONS TO CONSUMERS AND OTHER PROGRAMMING NETWORKS**

71. Because the Commission understood that Comcast’s neighborhooding was illustrated by the MCLU, which (i) already included BTV and (ii) had significant flexibility to include new channels, the Commission reasonably concluded that it would be a narrow, non-burdensome requirement to require Comcast to include BTV (and others) in *similar* neighborhoods Comcast might create “now or in the future.” But that assumption no longer applies under the approach Bloomberg now proposes. Bloomberg’s insistence that four channels make a news “neighborhood” would impose substantial costs, disruption and burden on Comcast’s customers and on displaced television networks that the Commission’s Order neither discussed nor envisioned. Such disruption is at odds with the underlying objective of the Condition. Indeed, by *declining* “to adopt a requirement that Comcast affirmatively undertake neighborhooding,” and adopting instead a “narrowly tailored condition” that applied only to “significant” groupings of news channels, the Commission sought to *spare* consumers and television networks the disruption and burden that Bloomberg now seeks to impose on them.

**A. Bloomberg’s Proposed Condition Would Magnify the Costs, Burdens and Disruption Otherwise Associated with Channel Relocation**

72. As noted, the Commission intended that the Condition would impose only modest costs and burdens on other networks and consumers. As interpreted by Bloomberg, however, the

Condition would have the opposite effect. It would require Comcast—across hundreds of systems—to relocate BTV and presumably all other independent news networks, either immediately or upon request, into one or more “neighborhoods” with other news networks. This would necessarily force relocation of other channels already in or around these “neighborhoods.” As discussed, Bloomberg’s target “neighborhoods” are typically in the 1–99 channel range where there are few unoccupied channel slots and many broadcast stations with statutory must-carry rights and cable networks with long-settled channel positions. Relocating broadcast stations with must-carry rights is, of course, out of the question. And relocating cable networks to accommodate BTV would have a domino effect throughout the affected system’s lineup, magnifying the costs, burdens, and customer disruption inherently associated with any channel relocation.<sup>119</sup>

73. For instance, Bloomberg has demanded that Comcast “neighborhood” BTV in the Atlanta DMA, where channel positions 34 through 37 on Comcast’s systems are occupied by CNN, CNN Headline News, CNBC and Fox News, respectively.<sup>120</sup> Placing BTV adjacent to this channel grouping would require Comcast to displace either TLC (at 33) or A&E (at 38). If (as would likely be the case) more independent news channels had to be relocated to this “neighborhood,” other affected networks would include, just for starters, TBS (at 39) and Discovery Channel (at 40).<sup>121</sup>

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<sup>119</sup> See Ex. 3, Kreiling Decl. ¶ 6; Ex. 4, Egan Decl. ¶¶ 33, 34 (“[T]he disruption of subscribers’ long-ago-settled viewing habits would be massive”; “[M]oving BTV in [generally] also means moving at least one channel out, doubling the customer disruption.”).

<sup>120</sup> See Ex. 1, Smit Decl. Attachment A at 4.

<sup>121</sup> Ex. 3, Kreiling Decl. ¶ 11.

74. Of course, the Condition and the Order never explain how and where these dislocated networks should be placed—again indicating that such displacement was not intended—and this question raises a whole new set of challenges. This is because moving these channels could require moving other channels as well. Relocating A&E to the vicinity of networks such as Bravo, for instance, would require moving it to channel 69 (currently occupied by Turner Classic Movies) or 71 (currently occupied by TV One). Comcast would thereby be required to find another home for Turner Classic Movies or TV One, which would likely lead to the displacement and relocation of additional channels. Many of these channels have long been at their current channel positions, and it is inevitable that some or all of these relocations will lead to dissatisfied networks and an endless series of disputes.

75. This problem expands geometrically as the number of networks to be relocated increases.<sup>122</sup> In the systems where Bloomberg seeks the repositioning of BTV, there are an average of [REDACTED] other independent news channels not located in the purported “neighborhood” in the 1–99 range.<sup>123</sup> If Bloomberg prevails, Comcast will presumably need to reposition each of these other news channels to the 1–99 range, thereby magnifying the disruption and harm to customers and displaced networks.<sup>124</sup>

76. This could very well be an *ongoing* source of incessant and increasing disruption. The number of independent news networks covered by the Condition is not fixed. New

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<sup>122</sup> *Id.* ¶ 12.

<sup>123</sup> Ex. 4, Egan Decl. ¶ 19; Ex. 5, Israel Decl. ¶ 22.

<sup>124</sup> Ex. 3, Kreiling Decl. ¶ 13–14 ; Ex. 4, Egan Decl. ¶ 36 (noting that “[t]he customer disruption . . . to accommodate Bloomberg’s request will necessarily be multiplied by almost four times”); *see generally supra* note 19 (explaining that “few operators today are willing to risk upsetting viewers by making wholesale channel lineup changes”).

independent news networks may be launched, news networks that are now held by Comcast could be spun off, and existing independent networks could change to a news format.<sup>125</sup> Each event may have ramifications for which networks must be in Comcast’s news neighborhood and may necessitate further realignment of Comcast’s two-digit channel positions—again, an issue far less likely to present a problem in a new neighborhood assembled in a capacious, digital channel range, as illustrated by Comcast’s MCLU.

**B. Impact on Networks, Customers, and Comcast**

77. Bloomberg’s current definition of a news channel “neighborhood” would impose needless costs, burdens, and disruption on displaced networks, customers, and Comcast itself.

**1. Impact on Networks**

78. As an initial matter, Bloomberg’s definition of a news channel “neighborhood” would affect popular networks such as ESPN, Discovery and the Cartoon Network, which, as just explained, could be displaced from their established channel positions in order to make way for BTV and other independent news channels.<sup>126</sup> Table 3, below, ranks unaffiliated non-news networks by the frequency with which they appear within two channel positions of a four-channel news “neighborhood” to which BTV does not belong. As the data in the table demonstrate, relocation of even a modest number of independent news networks to these “neighborhoods” would require Comcast to displace these unaffiliated networks from their established channel positions on hundreds of headends serving millions of customers:

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<sup>125</sup> See, e.g., Ex. 4, Egan Decl. ¶ 42; *supra* note 110.

<sup>126</sup> Ex. 5, Israel Decl. Table III.

**Table 3: Unaffiliated Non-News Networks Within Two Channel Positions of (or Within) a Four-Channel “Neighborhood” That Does Not Include BTV.**

<i>Callsign Netwo</i>	<i>rk</i>	<i>Frequency (Number of Headends Within the Relevant DMAs)</i>
ESPN ESPN		207
DSC The	Discovery Channel	194
NGWILD	National Geographic Wild	188
NGC Nat	ional Geographic Channel	186
ESPN2 ESPN	2	161
ESPNEWS ESPNE	WS	142
TRUTV truT	V	141
TLC The	Learning Channel	132
OWN Op	rah Winfrey Network	114
TOON C	artoon Network	110

Source: Tribune Media Services (2011); Ex. 5, Israel Declaration Table III.

79. Notably, Table 3 understates the full impact of Bloomberg’s proposed definition of a news channel “neighborhood” on unaffiliated networks because it identifies only those non-news networks that are themselves within two channel positions of a four-channel news “neighborhood.” As noted, however, the impact of Bloomberg’s definition would extend beyond these networks. To find new homes for the networks identified on Table 3, Comcast may well be required to displace *other* networks from their established channel positions.

**2. Impact on Customers**

80. The broad displacement that could result from Bloomberg’s definition would also confuse and frustrate customers unable to find their favorite channels.<sup>127</sup> While some MVPDs have made substantial changes to their channel lineups in recent years, those examples indicate that customer confusion and frustration may result, even when MVPDs take extensive measures to educate consumers as to upcoming channel changes.<sup>128</sup>

<sup>127</sup> Ex. 3, Kreiling Decl. ¶¶ 6, 14; Ex. 4, Egan ¶ 37.

<sup>128</sup> Ex. 3, Kreiling Decl. ¶¶ 14, 27–28 . Newspapers reported that “[a] day after Charter Communications made big changes to its channel lineup, many subscribers remain[ed] confused and searching for their favorite channels.” Tony Kiss, *Charter customers baffled by channel*

81. The impact could extend beyond those customers confused or frustrated by the channel changes themselves. Call volume driven by those customers could degrade the quality of customer service that Comcast is able to offer *other* customers. Customer care representatives engaged in answering questions regarding new channel placements would be unable to be as responsive to callers with more conventional billing questions or servicing issues.<sup>129</sup>

82. As noted above, such concerns, among others, have caused Comcast to avoid aligning channels by genre in the 1–99 block, where channel relocations would likely prove most disruptive. Even in its MCLU, Comcast has only aligned SD channels by genre in the 100–999 channel range and has aligned HD channels in the 1000–1999 range by genre, paralleling the SD channels.<sup>130</sup> To avoid relocating channels in the 1–99 channel block, Comcast has illuminated certain networks with channel positions below 100 in two channel positions—one below 100 and a second in an appropriate “neighborhood” above channel 100.<sup>131</sup>

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*changes*, The Asheville Citizen-Times, Aug. 27, 2009 (attached as Ex. 20). This occurred although “Charter mailed 500,000 postcards notifying subscribers that changes were coming to the system,” “did radio and print advertising, made automated phone calls and ran ‘crawl’ announcements across the bottom of The Weather Channel”; and posted “the new lineup at the Charter Web site.” *Id.* (“Placing the changes on a Web site won’t help [everyone], though. ‘A lot of people don’t have the Internet.’”); *cf.* Barbara Vancheri, Pittsburgh Post-Gazette, Jan. 9, 1997 (attached as Ex. 25) (“Hell hath no fury like a cable customer scorned—or confused. TCI has been taking 15,000 calls a day (compared to the usual 6,500) from Western Pennsylvanians. Among their complaints: Changes in the channel lineup . . .”).

<sup>129</sup> Ex. 3, Kreiling Decl. ¶ 15; *see also, e.g., CableVision juggles its channel lineup*, Lakeland Ledger, Jan. 1, 1992 (attached as Ex. 26) (“CableVision of Central Florida kicked off the new year by juggling its channel lineup. . . . Calls to the company’s local office were met with busy signals for most of the day Tuesday—lines jammed by people wanting to know what’s wrong with their cable channels.”); Ex. 4, Egan Decl. ¶ 37.

<sup>130</sup> Ex. 3, Kreiling Decl. ¶¶ 25–26.

<sup>131</sup> Ex. 2, Gaiski Decl. ¶ 23; Ex. 3, Kreiling Decl. ¶ 26. Other cable operators have taken similar steps to avoid relocating channels in the 1–99 channel block. *See, e.g., Ex. 22, supra* note 72.

### 3. Impact on Comcast

83. Finally, the channel relocations required by Bloomberg’s definition of a news “neighborhood” would impose repeated and substantial costs on Comcast itself. These costs would either never arise or arise with far lower frequency were the Condition applied as the Commission intended it—to broad, deliberate neighborhooding of the type Comcast has undertaken in the MCLU or other providers have done with the industry-standard news neighborhoods on their systems. Under Bloomberg’s definition, however, these costs would be repeatedly incurred each time a new independent news channel is launched or an existing channel becomes an independent news channel through a change in format or corporate affiliation.<sup>132</sup>

84. These include the costs of providing repeated notice to local franchising authorities and customers,<sup>133</sup> educating customers about upcoming channel changes through bill inserts, screen crawls and other means,<sup>134</sup> and managing the spikes in customer-care call center volume.<sup>135</sup> For example, even if Comcast were highly effective in its customer-education efforts and only 3% of Comcast’s customers called in as result of a change to their channel lineups, Comcast would still take over [REDACTED] incremental phone calls at a cost of over [REDACTED] [REDACTED].<sup>136</sup>

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<sup>132</sup> Ex. 4, Egan Decl. ¶ 42.

<sup>133</sup> *See generally* 47 C.F.R. §§ 76.1603(b) & (c); *see also* Ex. 3, Kreiling Decl. ¶ 17; Ex. 4, Egan Decl. ¶ 38.

<sup>134</sup> Ex. 3, Kreiling Decl. ¶ 27; Ex. 4, Egan Decl. ¶ 39.

<sup>135</sup> Ex. 3, Kreiling Decl. ¶¶ 15, 19; Ex. 4, Egan Decl. ¶ 37.

<sup>136</sup> Ex. 3, Kreiling Decl. ¶ 19.

85. The raft of channel relocations required by Bloomberg’s proposed definition of a news “neighborhood” would also require Comcast to expend ██████████ of dollars updating interactive programming guides and other channel directories, multiple internal and external databases, and other reference resources, such as print guides, newspaper TV listings, and online TV listings,<sup>137</sup> and require Comcast to perform substantial physical engineering work at each affected system headend each time a relocation was required.<sup>138</sup>

86. Again, this would be exacerbated because the channel realignment sought by Bloomberg would not be a one-time event, but would continue over time, if requests are permitted to come in on a staggered basis, and as networks adopt or abandon news formats or gain or lose independent status.<sup>139</sup>

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87. The costs and burdens described above are ones that the Commission sought to avoid by adopting a “narrowly tailored condition” based on Comcast’s (and others’) practice of broad neighborhooding at a high channel range.<sup>140</sup> Certainly if the Commission had believed it *was* adopting a condition that would trigger the disruption, costs, and consumer confusion described here, it would have addressed that in some way—especially since Comcast pointed

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<sup>137</sup> *Id.* ¶ 18.

<sup>138</sup> *Id.* ¶ 20.

<sup>139</sup> *Id.* ¶ 20. Examples of independent networks currently in carriage discussions with Comcast include ██████████ and ██████████. Other independent news channels that are not as yet carried by Comcast include BBC World, Al Jazeera, and CCTV International (China).

<sup>140</sup> Order, 26 FCC Rcd at 4287–88 ¶ 122.

much of this out on the record.<sup>141</sup> It is simply not plausible that the Commission would have subjected other networks and consumers to disruptive and repeated channel realignments without a single sentence explaining how those results were nevertheless in the public interest.

**III. THE CONDITION IS INAPPLICABLE BECAUSE IT  
MUST BE INTERPRETED AS PROSPECTIVE IN NATURE**

88. Bloomberg seeks to interpret the Condition to require changes to long-standing lineups that Comcast has not changed since the Transaction. Focusing on the phrase “now or in the future,” Bloomberg claims that the “express (and very plain) terms of the FCC’s Order”<sup>142</sup> require that BTV be included in any channel grouping containing at least four news channels within a block of five adjacent channel positions on any Comcast headend in the Relevant DMAs that carries BTV.<sup>143</sup> But the Order is neither express nor plain with regard to the applicability of the Condition to existing lineups. In fact, a careful reading of the Condition, the Order and the record on which the Condition was based demonstrates that the Condition is triggered only if Comcast creates a news neighborhood *after* the Transaction closed.

89. The Bureau need not resolve this issue because, as demonstrated above, Comcast generally does not “neighborhood” news channels today. That said, Bloomberg’s failure and inability to allege that Comcast has created a news neighborhood since the Transaction closed, much less one that disadvantaged BTV, supplies an independent basis for denial of the Complaint.

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<sup>141</sup> See Ex. 11, Oct. 22 *Ex Parte*.

<sup>142</sup> Letter from David Boies, Esq., Boies, Schiller & Flexner LLP, and Stephen Diaz Gavin, Esq., Patton Boggs LLP, Counsel for Bloomberg, to Mr. Neil Smit, President, Comcast Cable Communications, LLC, at 5 (May 26, 2011) (“Pre-Complaint Letter”) (attached as Ex. 1, Smit Decl. Attachment B).

<sup>143</sup> Compl. § VIII(e).

**A. The Language of the Comcast-NBCUniversal Order Indicates that the Condition Is Prospective in Nature**

90. The Condition provides that Comcast must relocate independent news networks if it “now or in the future carries news and/or business news channels in a neighborhood.”<sup>144</sup> That trigger, in turn, is 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.”<sup>145</sup>

91. But Bloomberg takes the position that there is *no* active trigger for the Condition to apply. Instead, it maintains that as soon as the Order was issued, Comcast was required to relocate networks “whenever there are four or more news channels consecutively placed or wherever there are at least four news channels located in any block of five adjacent channel positions.”<sup>146</sup> In other words, Bloomberg believes that the Condition was triggered on January 18, 2011, by Comcast’s legacy channel lineups without any action on Comcast’s part. Bloomberg’s interpretation, however—which would cause substantial disruption to other networks and consumers and infringe on Comcast’s protected, editorial discretion—is not the most logical reading of the Condition. Bloomberg focuses exclusively on the “now or in the future” language, but this language is best understood as referring to the MCLU (which Comcast could be expected to expand “now”) and similar neighborhooding it might deploy “in the future.”<sup>147</sup> Indeed, a prospective reading is required by the Condition’s inclusion of the word

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<sup>144</sup> Order, 26 FCC Rcd at 4358 § III.2.

<sup>145</sup> *Id.* (emphasis supplied).

<sup>146</sup> Ex. 1, Smit Decl. Attachment B, Pre-Complaint Letter at 6. *See also id.* at 4 (Comcast is required to move BTV “into any news neighborhood that Comcast has on any system.”).

<sup>147</sup> The word “now,” read in the overall context of the Condition and the Order, must refer to the period that began on the date the Transaction closed. The Condition, as all the others in the Order, was a condition subsequent to the closing of the Transaction, *i.e.*, it applies only to

“placing,” which Bloomberg ignores. That word plainly refers to an affirmative act or movement—*i.e.*, moving networks in a way that *creates* a news neighborhood. By choosing the word “placing” (as opposed, for example, to “*having been placed*” or some other similar verb form), the Commission signaled that the Condition was intended to be triggered only if Comcast took affirmative steps to create a news neighborhood after the Transaction closed. In other words, Comcast must include independent news networks such as BTV in any broad groupings of news channels it may have been in the process of introducing as the Transaction closed, such as the MCLU, *i.e.*, “now,” and similarly broad groupings of news channels that Comcast might introduce thereafter, *i.e.*, “in the future.”

92. Moreover, the Commission expressly declined to interfere with Comcast’s existing channel lineups by rejecting Bloomberg’s call to require Comcast to “affirmatively undertake neighborhooding.”<sup>148</sup> The Commission instead stated that the Condition “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.”<sup>149</sup> The Commission’s use of the language “would only take effect if” and “undertook” leaves no doubt that an affirmative act of relocation is required to trigger the Condition.<sup>150</sup> Its reference to Comcast-NBCUniversal as the entity that must undertake such

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Comcast post-transaction. *See* Order, 26 FCC Rcd at 4353 ¶ 285 (stating that transfer of control application “IS GRANTED, subject to the conditions set forth in this Order, including Appendix A”).

<sup>148</sup> Order, 26 FCC Rcd at 4287 ¶ 122.

<sup>149</sup> *Id.* at 4288 ¶ 123 n.295.

<sup>150</sup> The reference to “additional search capabilities” further emphasizes the forward-looking nature of the News Neighborhooding Condition. These additional search capabilities are a technology that is evolving and that Comcast predicts will significantly diminish the

affirmative act further underscores that the Condition focused on post-consummation behavior by the combined entity, not pre-consummation acts by Comcast.

**B. Retrospective Application Would Be Inconsistent with Long-Standing Commission Policy that Conditions Address Transaction-Specific Harms**

93. An exclusively prospective interpretation of the Condition is also consistent with the Commission’s long-standing policies regarding the conditions it may impose on transactions. It is well-established that the Commission does not use transaction conditions as a remedy for pre-transaction conduct. Rather, Section 303(r) of the Communications Act authorizes the Commission “to impose and enforce conditions to ensure that a transaction will yield overall public interest benefits,” and the Commission has thus “imposed conditions to confirm specific benefits or remedy specific harms *likely to arise from transactions . . .*”<sup>151</sup>

94. There is nothing in the terms of the Condition or the Order even remotely suggesting that the Commission intended to deviate from its long-standing policies regarding transaction conditions and to interfere with Comcast’s existing channel lineups, rather than addressing post-transaction conduct. The Commission indicated that it adopted conditions “to importance of channel placement. *See Ex. 11, Oct. 22 Ex Parte.* The condition represents a hedge should Comcast’s prediction prove incorrect, and Comcast instead turns to neighborhooding in the future.

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<sup>151</sup> Order, 26 FCC Rcd at 4249 ¶ 25 (emphasis supplied); *see, e.g., In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corporation, Time Warner Cable Inc., and Comcast Corporation*, 21 FCC Rcd 8203, 8219 ¶ 26 (2006) (“*Applications for Consent*”) (“Despite its broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are reasonably related to the Commission’s responsibilities under the Communications Act and related statutes.”); *In the Matter of Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to the Assignment or Transfer of Control of Licenses or Authorizations*, 20 FCC Rcd 13967, 13979 ¶ 23 (2005); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to the Assignment or Transfer of Control of Licenses or Authorizations*, 19 FCC Rcd 21522, 21545 ¶ 43 (2004).

mitigate the potential harms the proposed combination might otherwise cause[,]” not to take action to address the effect of pre-transaction behavior by Comcast.<sup>152</sup> Consistent with this assertion, the Commission’s specific rationale for adopting the Condition focused on post-transaction behavior by the combined entity:

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 mitigate any public interest harms.<sup>153</sup>

95. Thus, the Condition should be viewed only as a remedy for specific post-transaction actions that might cause public interest harm, *i.e.*, post-transaction neighborhooding that excluded Bloomberg and other independent news channels. Bloomberg’s Complaint itself acknowledges that the Condition was intended to protect independent news networks from potential discrimination that might result from the Transaction.<sup>154</sup> If that is the case, and consistent with the Commission’s consistent policy of “impos[ing] conditions *only* to remedy harms that arise from the Transaction (*i.e.*, transaction-specific harms),”<sup>155</sup> the Condition can only apply to future conduct by Comcast. Comcast cannot be deemed to discriminate against BTV or other independent news networks by passively continuing the *status quo* arrangement of channels arranged long before the Transaction was consummated or even contemplated.

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<sup>152</sup> Order, 26 FCC Rcd at 4240 ¶ 4.

<sup>153</sup> *Id.* at 4282 ¶ 110.

<sup>154</sup> *See* Compl. ¶¶ 18–19.

<sup>155</sup> *Applications for Consent*, 21 FCC Rcd at 8219 ¶ 26 (2006) (emphasis supplied).

**C. The Record Before the Commission Supports the Purely Prospective Application of the Condition**

96. Bloomberg’s advocacy before the Commission also supports the notion that the Condition is triggered only if Comcast takes affirmative steps to create a news neighborhood after the close of the Transaction. Until very late in the process, Bloomberg was arguing in favor of a Commission mandate to require Comcast to “reorganize its channel placement alignment so that business news channels are adjacent and contiguous to CNBC and any similar Comcast business news channels. . . .”<sup>156</sup> As noted above, Bloomberg contended that cable systems “are *expected* to adopt neighborhooding as they transition to digital technology,”<sup>157</sup> but that they had not yet done so to a significant degree.<sup>158</sup> Indeed, Bloomberg argued that Comcast’s control of CNBC and MSNBC would *remove* Comcast’s natural incentives to move toward neighborhooding—*e.g.*, to expand the MCLU.<sup>159</sup> Bloomberg, therefore, demanded that the

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<sup>156</sup> Ex. 8, Petition to Deny of Bloomberg L.P. at 33; *see also id.* at 31 (“Absent the merger, BTV would have expected Comcast to neighborhood its channel line-up quickly to compete with other MVPDs . . .”).

<sup>157</sup> Ex. 8, Petition to Deny of Bloomberg L.P. at 29 (emphasis supplied); Bloomberg L.P. Reply to Comcast-NBCU Opposition, MB Docket No. 10-56 (Aug. 19, 2010) (“Reply to Opposition”) (relevant excerpts attached as Ex. 9), at 30.

<sup>158</sup> Ex. 8, Petition to Deny of Bloomberg L.P. at 33 (“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 . . . in disadvantageous channel positions *when* Comcast’s cable systems create genre-related neighborhoods”) (emphasis added).

<sup>159</sup> Bloomberg Response to Petitions to Deny and Comments, MB Docket No. 10-56 (July 21, 2010) (attached as Ex. 8, Attachment A), at 3. *See also* Ex. 7, Babyak Testimony, at 2 (“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 disincentive to hinder this pro-consumer development on its systems.”); Ex. 8, Petition to Deny of Bloomberg L.P. at 29-30 (“If the Transaction had not been proposed, BTV would have expected to be neighborhooded with other business news channels as Comcast neighborhooded all of its systems.”); *see also* Marx Economic Report, at 28 ¶ 94 (“[I]n the absence of the transaction, it

Commission *require* Comcast to neighborhood. In other words, Bloomberg itself conceded that Comcast would have to engage in affirmative conduct in order to create news neighborhoods.

97. Finally, it is evident from the record of the merger proceeding that much of the language of the Condition was taken from proposals suggested by Bloomberg, in the final days before adoption of the Order.<sup>160</sup> Although, as noted elsewhere in this Answer, the differences in the language proposed by Bloomberg and that ultimately adopted by the Commission are critical, the fact remains that Bloomberg was the primary advocate and author of the Condition. Thus, because BTV's current interpretation is inconsistent with its avowed reason for seeking the Condition, to the extent any doubt remains after the analysis set forth above, the Condition should be interpreted against Bloomberg as the author.<sup>161</sup>

98. Accordingly, because Bloomberg's Complaint is premised on a misinterpretation of the Condition as applying to any neighborhooding of news channels by Comcast prior to (as opposed to after) the Transaction, it must be dismissed or denied.

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would be likely that Bloomberg TV would be positioned in the same 'neighborhood' as CNBC when Comcast realigns its channel locations . . . .").

<sup>160</sup> See Ex. 14, Jan. 18 *Ex Parte* (forwarding proposed condition language that had been provided in oral *ex parte* presentations on January 14 and 16, 2011); Letter from Stephen Diaz Gavin, Patton Boggs LLP, Counsel to Bloomberg, to Marlene H. Dortch, Secretary, Federal Commc'ns Comm., MB Docket No. 10-56 (Jan. 18, 2011) (attached as Ex. 15) (forwarding proposed condition language that had been provided in an oral *ex parte* presentation on January 14, 2011).

<sup>161</sup> See, e.g., *United States v. Seckinger*, 397 U.S. 203, 210 (1970) (recognizing "the general maxim that a contract should be construed most strongly against the drafter"); *InterPetrol Bermuda Ltd. v. Kaiser Aluminum Int'l Corp.*, 719 F.2d 992, 998 (9th Cir. 1983) ("The district court's conclusion, and ours, is supported by the general rule that questions of contract interpretation will be resolved against the party who prepared the writing. . . .").

**IV. TO THE EXTENT THE COMPLAINT IS NOT DENIED,  
IT SHOULD BE DESIGNATED FOR HEARING**

99. To the extent the Bureau does not dismiss or deny Bloomberg's Complaint on any or all of the grounds set forth above, and accepts that Bloomberg's interpretation of the Condition is or may be correct in whole or in part, the Bureau should designate the complaint for hearing before an administrative law judge to address the following factual issues relevant to a determination of how the Bureau should define or apply the Condition:

- Is there an industry standard or practice regarding what constitutes news neighborhooding and, if so, what is it?
- How many news channels (as defined for purposes of the Condition) does Comcast carry on individual cable systems?
- Based upon this definition of a news channel, where (if anywhere) does Comcast maintain "news neighborhoods"? Where (if anywhere) does Comcast maintain more than one "news neighborhood"?
- Which of these news channels are "independent" as defined by the Condition and which would need to be relocated to comply with Bloomberg's (or any other relevant) definition of news neighborhooding?
- Which non-news channels would have to be displaced to make room for the independent news channels (including cascading relocations)?
- Which broadcast channels with must-carry rights stand in the way of Bloomberg's desired channel placement?
- What would be the cost of burdens of such relocations on customers and displaced channels (including the collateral consequences of cascading relocations)?

**V. THE BUREAU WILL HAVE TO CONSIDER  
A LARGE NUMBER OF OTHER QUESTIONS**

100. Finally, the Bureau must separately consider the complex question of any appropriate remedy here, if and when that were to become relevant, because the Condition and Order are ambiguous on key elements of that issue.

- For example, would the Condition require that Comcast provide BTV and other independent networks carriage in multiple news neighborhoods, or only one? If only one, is the selection of the relevant neighborhood within Comcast's editorial discretion?
- Does the Condition require that Comcast collapse all news channels into a single neighborhood, or may Comcast maintain two? If only one neighborhood is permitted, is its placement in the channel lineup within Comcast's editorial discretion?
- If the Condition applies to multiple neighborhoods, do SD networks have a right to be in a HD neighborhood, which would be nonsensical? Do the two have to be combined into one neighborhood, which would similarly make no sense? If SD and HD are considered separately, what are the standards for what constitutes a news neighborhood among SD and HD channels?
- Are there guidelines for displacement and relocation of other networks? Do these networks have any right to object (and are there any procedures for objecting) to their displacement?
- Must independent news networks be moved if they would prefer not to be moved? Do they have one opportunity to make that decision or multiple opportunities over the seven-year term?
- Is there an appropriate or required time period to implement the relocation and is the timing consistent with LFA notice requirements?

101. These are just some of the key considerations that need to be addressed with reference to all affected parties, including other affected networks (both independent news networks and other potentially displaced non-news networks). This large collection of unanswered questions suggests that the Commission never intended to adopt Bloomberg's broad, open-ended application of the Condition, but intended to apply it to neighborhooding, now or in the future, that mirrored Comcast's existing MCLU and the neighborhoods of others in the industry. If it is nevertheless to be applied in that manner, then Comcast and the Bureau must carefully consider these issues and provide guidance not just for this dispute but for Comcast's compliance generally.

**RESPONSES TO NUMBERED PARAGRAPHS**

Except as hereinafter specifically admitted, qualified, or otherwise answered, Comcast denies each and every allegation or assertion in the Complaint. Comcast also denies each and every allegation or assertion in the Complaint for which Comcast lacks adequate information or knowledge to admit or deny.<sup>162</sup> With respect to the unnumbered paragraphs that comprise the Complaint's Introduction and Summary, except to the extent that they contain legal conclusions to which no response is required, Comcast denies the allegations contained therein and incorporates by reference its responses to paragraphs 1–82 of the Complaint as set forth below. Comcast answers each numbered paragraph of the Complaint with the following correspondingly numbered paragraphs.

1. Comcast denies information or knowledge sufficient to form a belief as to the allegations in Paragraph 1, except it admits that BTV is delivered over MVPDs.

2. Comcast denies knowledge or information sufficient to form a belief as to the allegations in the first through sixth sentences of Paragraph 2, except Comcast admits that, at least until 2008, BTV catered to a narrow audience. Comcast denies the allegations in the seventh through ninth sentences, except it admits that CNBC is a provider of televised business news.

3. Comcast denies knowledge or information sufficient to form a belief as to the contact information for Bloomberg provided in Exhibit A to the Complaint and referenced in Paragraph 3.

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<sup>162</sup> See 47 C.F.R. § 76.7(b)(2)(iv).

4. Comcast admits the allegation in the first sentence of Paragraph 4 to the extent that Comcast is the largest MVPD in the United States as measured by number of cable television subscribers. Comcast denies the allegations in the second sentence, except it admits that Comcast owns and operates cable systems in 39 states and the District of Columbia. Comcast admits the allegations in the third sentence. Comcast denies knowledge or information sufficient to form a belief as to the allegations in the fourth sentence. Comcast states that CNBC's descriptions of itself on its website speak for themselves, and Comcast neither confirms nor denies the accuracy of the quotation provided.

5. Comcast admits that Exhibit A to the Complaint contains contact information for Comcast.

6. Comcast states that the Order speaks for itself and neither confirms nor denies the accuracy of the quotation excerpted in Paragraph 6.

7. Comcast states that the Order speaks for itself and neither confirms nor denies the accuracy of the Complaint's description of, and the quote from, the Order that are provided in Paragraph 7.

8. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 8, except Comcast admits that Bloomberg is a "video programming vendor" as defined by the Order and 47 C.F.R. § 76.1300(e).

9. Comcast states that the Order speaks for itself and neither confirms nor denies the accuracy of the Complaint's description of, and the quote from, the Order that are provided in Paragraph 9.

10. Comcast admits the allegations in Paragraph 10.

11. Comcast states that Paragraph 11 contains a legal conclusion as to which no response is required.

12. Comcast denies the allegations in the first sentence of Paragraph 12, except Comcast admits that it received a letter, dated May 26, 2011, stating Bloomberg's intent to file a complaint with the Commission. Comcast denies knowledge or information sufficient to form a belief as to the allegations in the second sentence, except Comcast admits that Exhibit B contains a copy of Bloomberg's letter dated May 26, 2011.

13. Comcast states that its letter of June 6, 2011 speaks for itself, and neither confirms nor denies the accuracy of the Complaint's description of, and the quote from, the letter that are provided in the first and second sentences of Paragraph 13. Comcast admits the allegation in the third sentence.

14. Comcast states that Paragraph 14 contains legal conclusions as to which no response is required; to the extent a response is required, however, Comcast denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14.

15. Comcast admits the allegations in Paragraph 15.

16. With respect to the first sentence of Paragraph 16, Comcast admits that the Commission adopted the Order approving the Transaction on January 18, 2011, but states that the Order speaks for itself and neither confirms nor denies the accuracy of the quote provided. Comcast states that the second sentence contains legal conclusions as to which no response is required; to the extent the second sentence purports to summarize the aims of the Order's conditions, however, Comcast refers to the full and complete Order for its contents.

17. Comcast states that the Order speaks for itself and neither confirms nor denies the accuracy of the Complaint's descriptions of, and the quotes from, the Order that are provided in Paragraph 17.

18. Comcast admits the allegations in the first sentence of Paragraph 18 to the extent that Comcast is the largest MVPD in the United States as measured by number of cable television subscribers, Comcast acquired a controlling interest in NBCUniversal through the Transaction, and CNBC has the highest revenues, profits, and viewership among networks dedicated to business news in the U.S. Comcast denies the allegation in the second sentence. Comcast states that the Order speaks for itself and neither confirms nor denies the accuracy of the Complaint's descriptions of, and the quotes from, the Order that are provided in the third and fourth sentences of Paragraph 18.

19. Comcast states that the Order speaks for itself and neither confirms nor denies the accuracy of the Complaint's descriptions of, and the quotes from, the Order that are provided in Paragraph 19.

20. Comcast states that the Order speaks for itself and neither confirms nor denies the accuracy of the Complaint's descriptions of, and the quotes from, the Order that are provided in Paragraph 20.

21. Comcast states that its letter of January 21, 2011 speaks for itself, and neither confirms nor denies the accuracy of the Complaint's descriptions of, and quotations from, that letter in Paragraph 21.

22. Comcast admits the allegations in Paragraph 22.

23. Comcast denies knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 23. Comcast admits the allegations in the second

sentence of Paragraph 23. Comcast denies knowledge or information sufficient to form a belief as to the allegations in the third sentence. Comcast admits the allegation in the fourth sentence.

24. Comcast admits the allegations in Paragraph 24.

25. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 25.

26. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 26, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, BTV provides programming that relates at least partly to business news.

27. Comcast admits the allegations in Paragraph 27.

28. Comcast admits the allegations in Paragraph 28.

29. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 29, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, CNBC provides programming that relates at least partly to business news.

30. Comcast admits the allegations in Paragraph 30.

31. Comcast admits the allegations in Paragraph 31.

32. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 32, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, CNBC World provides programming that relates at least partly to business news.

33. Comcast admits the allegations in Paragraph 33.

34. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 34, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S.

Eastern Time Zone, Fox Business Channel provides programming that relates at least partly to business news.

35. Comcast admits the allegations in Paragraph 35.

36. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 36, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, Fox News Channel at least partly provides news-related programming.

37. Comcast admits the allegations in Paragraph 37.

38. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 38, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, CNN at least partly provides news-related programming.

39. Comcast admits the allegations in Paragraph 39.

40. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 40, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, HLN at least partly provides news-related programming.

41. Comcast admits the allegations in Paragraph 41.

42. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 42, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, CNN International at least partly provides news-related programming.

43. Comcast admits the allegations in Paragraph 43.

44. Comcast admits the allegations in Paragraph 44.

45. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 45, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, MSNBC provides programming that relates at least partly to public affairs.

46. Comcast admits the allegations in the first through third sentences of Paragraph 46. Comcast denies knowledge or information sufficient to form a belief as to the allegations in the fourth through sixth sentences. Comcast admits the allegations in the seventh sentence.

47. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 47, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, C-SPAN provides programming at least partly related to public affairs.

48. Comcast admits the allegations in Paragraph 48.

49. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 49, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, C-SPAN2 provides programming at least partly related to public affairs.

50. Comcast admits the allegations in Paragraph 50.

51. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 51, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, C-SPAN3 provides programming at least partly related to public affairs.

52. Comcast admits the allegations in Paragraph 52.

53. Comcast denies knowledge or information sufficient to identify the network to which Paragraph 53 refers as "News First." Comcast denies knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 53, except Comcast admits that it carries the remaining networks listed in Paragraph 53 and that, from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, those networks provide programming at least partly related to news- or public affairs.

54. Comcast admits the allegations in Paragraph 54.

55. Comcast denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 55, except Comcast admits that from 6 a.m. through 4 p.m. in the U.S. Eastern Time Zone, the networks listed in Paragraph 55 at least partly provide news- or public affairs-related programming.

56. Comcast denies the allegations in Paragraph 56.

57. Comcast denies the allegations in Paragraph 57.

58. Comcast denies the allegations in Paragraph 58.

59. Comcast denies the allegations in Paragraph 59.

60. Comcast denies the allegations in Paragraph 60, except it admits that Exhibit G to the Complaint purports to contain a list of Comcast headends that carry four news channels within blocks of five adjacent channel positions and that Exhibit H to the Complaint contains parts of the lineups of the headends listed in Exhibit G.

61. Comcast denies the allegations in Paragraph 61.

62. Comcast denies the allegations in Paragraph 62. Comcast states that, according to data licensed from TMS, Bloomberg's definition of a "neighborhood" yields two groupings of at least four SD news channels in a block of five adjacent channel positions in 312 of Comcast's headends in the 35 most-populous DMAs, and that one of those two groupings carries BTV in 161 of Comcast's headends located in the 35 most populous DMAs. Ex. 5, Israel Decl. Table II.

63. Comcast denies the allegations in Paragraph 63.

64. Comcast denies the allegations in Paragraph 64.

65. Comcast denies the allegations in Paragraph 65.

66. Comcast denies the allegations in the first sentence of Paragraph 66, except it admits that on March 3, 2011, Daniel Doctoroff of Bloomberg called Steve Burke of Comcast

and raised with Mr. Burke the issue of BTV's placement on Comcast's channel lineups.

Comcast admits the allegations in the second sentence.

67. Comcast denies the allegations in the first sentence of Paragraph 67, except it admits that on March 8, 2011, Daniel Doctoroff and Andrew Lack of Bloomberg spoke telephonically with Neil Smit of Comcast. Comcast denies the allegations in the second and third sentences, except it admits that Mr. Smit solicited the views of Messrs. Doctoroff and Lack concerning the Condition in writing. Comcast admits the allegation in the fourth sentence.

68. Comcast denies knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 68, except Comcast admits that Mr. Smit received from Mr. Doctoroff a letter dated March 10, 2011, a copy of which is attached to the Complaint as Exhibit I. With respect to the allegations in the remaining sentences of Paragraph 68, Comcast states that the letter attached to the Complaint as Exhibit I speaks for itself, and Comcast neither confirms nor denies the accuracy of the descriptions of the letter provided in Paragraph 68.

69. Comcast admits the allegations in the first and second sentences of Paragraph 69, but states that, during the March 8, 2011 telephone discussion to which Paragraph 67, above, refers, Bloomberg agreed to express its views concerning the Condition in writing and agreed to set up a call for the parties to discuss those views in the following week. Comcast denies the allegations in the third sentence, except it admits that during their March 18, 2011 teleconference, Mr. Smit informed Messrs. Doctoroff and Lack that Comcast was looking into a number of issues related to the channel lineups provided by Bloomberg in its March 10 letter, and that Mr. Smit would speak to them again in the near future.

70. Comcast admits the allegations in the first sentence of Paragraph 70. Comcast denies the allegations in the second through seventh sentences, except that it admits that during the parties' April 4, 2011 teleconference, Mr. Smit stated that Comcast would comply with the neighborhooding condition in the Order, that the order applied only to news neighborhoods that might be created in the future, that Comcast disagreed with Bloomberg's interpretation of the neighborhooding condition, and that Comcast did not believe the Commission intended to require widespread disruption and realignment of Comcast's existing channel lineups. Mr. Smit reiterated Comcast's interest in pursuing commercial discussions with Bloomberg, while Mr. Lack responded with an ultimatum that Comcast implement Bloomberg's channel placement repositioning demands in their entirety. Further, Mr. Doctoroff added that Bloomberg had spent "a lot of time and money" on the FCC process and expected compliance with its interpretation of the Order.

71. Comcast denies knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 71, except Comcast admits that Bloomberg sent it a letter dated May 26, 2011. Comcast states that the May 26, 2011 letter from Bloomberg, which is attached to the Complaint as Exhibit B, speaks for itself and Comcast neither confirms nor denies the accuracy of the descriptions of the letter provided in Paragraph 71.

72. With respect to the first sentence of Paragraph 72, Comcast admits that it responded to Bloomberg's May 26, 2011 letter with a letter dated June 6, 2011. Comcast further notes that, in its June 6 letter, it again offered to engage in negotiations with Bloomberg. With respect to the second and third sentences, Comcast states that its June 6, 2011 letter, which is attached to the Complaint as Exhibit C, speaks for itself and, accordingly, Comcast neither

confirms nor denies the accuracy of the descriptions of, and the quotes from, the letter that are provided in Paragraph 72.

73. With respect to Paragraph 73 of Bloomberg's Complaint, Comcast incorporates by reference the responses provided in Paragraphs 1–72 above, as applicable to each of Paragraphs 1–72 in the Complaint.

74. Comcast states that the Order speaks for itself and neither confirms nor denies the accuracy of the quotation excerpted in Paragraph 74.

75. Comcast states that the allegations contained in Paragraph 75 constitute legal and other conclusions as to which no responsive pleading is required. To the extent a response is required, Comcast denies the allegations in the first and second sentences of Paragraph 75, except it admits that it currently carries, on a number of head-ends, four news channels within blocks of five adjacent channel positions. Comcast denies that these groupings constitute “neighborhoods” and denies that four news channels constitute a “significant number or percentage of news channels” within the meaning of the Order. Comcast denies the allegations in the third sentence. With respect to the fourth sentence, Comcast admits that the definitions of the word “significant” listed in the Merriam-Webster's Collegiate Dictionary, 10th Edition (1995) include “of a noticeable or measurably large amount” and “probably caused by something other than chance.”<sup>163</sup> Comcast denies that either of these definitions has any relevance to the Order. In particular, Comcast states that the two definitions proffered by Bloomberg are secondary definitions of the term “significant,” and that the term, as used in the Order, should be ascribed its primary definitions of “important” and “having meaning.” Comcast further avers

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<sup>163</sup> Merriam-Webster's Collegiate Dictionary, 10th Edition (1995) (attached as Ex. 27).

that in the context of the Order, whether a given channel grouping is “significant” must be assessed in light of the Order’s objectives, customer expectations, industry practice, and the overall context of the Condition’s adoption. By these standards, the four-channel groupings identified in Bloomberg’s Complaint are not “significant” because, among other things, (a) four channels constitutes only approximately one quarter of the SD news channels available on average on Comcast headends that carry BTV in the 35 most populous DMAs, and (b) four channels are a small fraction of the 10–15 news channels carried in news neighborhoods created by other MVPDs. Comcast denies the allegation in the fifth sentence. Comcast denies knowledge or information sufficient to form a belief as to the allegations in the sixth and seventh sentences.

76. Comcast states that the allegations contained in Paragraph 76 constitute legal and other conclusions as to which no responsive pleading is required. To the extent a response is required, Comcast denies the allegations in the first sentence of Paragraph 76, except it admits that the Order requires a channel grouping to contain either a significant number *or* percentage of news channels to constitute a “neighborhood.” Comcast denies that Bloomberg’s definition of “neighborhood” would contain either a significant number *or* percentage of news channels that are substantially adjacent to one another. Comcast denies the allegations in the second, third, fourth, and fifth sentences.

77. Comcast states that the allegations contained in Paragraph 77 constitute legal and other conclusions as to which no responsive pleading is required. To the extent a response is required, Comcast denies knowledge or information sufficient to form a belief as to the allegations in the second sentence, and denies the allegations in the third and fourth sentences.

78. Comcast states that the allegations contained in Paragraph 78 constitute legal and other conclusions as to which no responsive pleading is required.

79. Comcast states that the allegations contained in Paragraph 79 constitute legal and other conclusions as to which no responsive pleading is required. To the extent a response is required, Comcast denies the allegations in Paragraph 79. In particular, Comcast notes that retrospective application of the Condition to “neighborhoods” allegedly existing *already* would be inconsistent with the Commission’s long-standing policy of imposing and enforcing conditions only when doing so would confirm transaction-specific benefits or remedy transaction-specific harms, and would be impossible to square with the text of the Order as well as Bloomberg’s own advocacy before the Commission, in which Bloomberg repeatedly characterized “neighborhooding” of news channels as a practice in which it expected Comcast and other cable operators to engage *in the future*.

80. Comcast states that the allegations contained in Paragraph 80 constitute legal and other conclusions as to which no responsive pleading is required. To the extent a response is required, Comcast admits that Bloomberg is not affiliated with Comcast-NBCUniversal, but otherwise denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 80.

81. Comcast states that the allegations contained in Paragraph 81 constitute legal and other conclusions as to which no responsive pleading is required. To the extent a response is required, Comcast denies the allegations in Paragraph 81, except that it admits that Exhibit G to the Complaint purports to contain a list of Comcast headends that carry four news channels within blocks of five adjacent channel positions, where the group of four news channels does not include BTV. Comcast denies that any such grouping constitutes a “neighborhood.”

82. Paragraph 82 presents a legal conclusion to which no response is required.

**CONCLUSION**

For the foregoing reasons, Bloomberg's program carriage complaint should be denied with prejudice.

Respectfully submitted,



Michael P. Carroll

Arthur J. Burke

Rajesh S. James

DAVIS POLK & WARDWELL LLP

450 Lexington Avenue

New York, NY 10017

(212) 450-4000

Sarah L. Gitchell  
Thomas R. Nathan  
Comcast Cable Communications, LLC  
One Comcast Center  
Philadelphia, PA 19103

Lynn. R. Charytan  
Justin Smith  
Frank La Fontaine  
Comcast Corporation  
2001 Pennsylvania Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

David H. Solomon

J. Wade Lindsay

WILKINSON BARKER KNAUER, LLP

2300 N Street, N.W., Suite 700

Washington, DC 20037

(202) 783-4141

*Attorneys for Comcast Cable Communications, LLC*

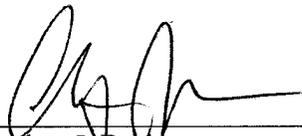
July 27, 2011

VERIFICATION

I, Arthur J. Burke, do hereby declare and state under penalty of perjury as follows:

1. I am a partner in the law firm of Davis Polk & Wardwell LLP, and
2. I have read the foregoing Answer of Comcast Cable Communications, LLC ("Answer"). To the best of my personal knowledge, information, and belief, the statements made in this Answer other than those of which official notice can be taken, are well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. This Answer is not interposed for any improper purpose.

\_\_\_\_\_  
July 27, 2011

  
\_\_\_\_\_  
Arthur J. Burke

**CERTIFICATE OF SERVICE**

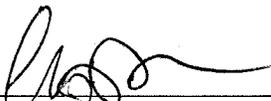
I, Arthur J. Burke, hereby certify that, on July 27, 2011, copies of the attached "Answer of Comcast Cable Communications, LLC" were served by hand delivery to the following:

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

Brendan Murray  
Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Room 4-A373  
Washington, DC 20554

Stephen Diaz Gavin  
Kevin J. Martin  
Jane F. Moran  
Matthew B. Berry  
Patton Boggs LLP  
2550 M. Street, N.W.  
Washington, DC 20037

Robert Silver  
Boies Schiller & Flexner LLP  
575 Lexington Avenue, 7th Floor  
New York, NY 10022

  
\_\_\_\_\_  
Arthur J. Burke

# Exhibit 1

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

In the Matter of	)	
	)	
Bloomberg L.P.,	)	
	)	
Complainant,	)	MB Docket No. 11-104
	)	
v.	)	
	)	
Comcast Cable Communications, LLC,	)	
	)	
Defendant.	)	

**DECLARATION OF NEIL SMIT**

1. My name is Neil Smit. My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.
2. I am President of Comcast Cable Communications, LLC (“Comcast Cable” and, together with its affiliates, “Comcast”) and Executive Vice President of Comcast Corporation. I have held that title since March 2010, prior to which I was Chief Executive Officer and Director at Charter Communications since 2005. The statements made herein are based on personal knowledge or information I obtained during my employment by Comcast, and my review of certain documents.
3. In my position at Comcast, I am responsible for all business aspects of the company’s cable operations.

4. The FCC issued the Comcast-NBCUniversal Order<sup>1</sup> on January 18, 2011. On or about March 8, 2011, Greg Rigdon, Executive Vice President of Content Acquisition for Comcast, and I spoke by phone with Andrew Lack, CEO of Bloomberg Media Group, and Daniel Doctoroff, President of Bloomberg L.P. (“Bloomberg”). During that discussion, Mr. Doctoroff asked me to explain Comcast’s path to implementation of compliance with the neighborhooding condition in the Order. Mr. Lack stated that Bloomberg defined a neighborhood as wherever there are three or more major news channels near each other. I asked Mr. Doctoroff to send me information as to where Bloomberg believed Comcast might be engaged in neighborhooding.

5. On March 10, 2011, Mr. Doctoroff sent me a letter to which he attached a list of markets where Bloomberg claimed that Comcast had neighborhoods that for the most part contained at least four news channels in contiguous and adjacent channel positions.<sup>2</sup>

6. On March 18, 2011, I spoke with Messrs. Doctoroff and Lack to discuss their March 10 letter, and I told them that Comcast was looking into a number of issues relating to the lineups they had listed, and that I would speak to them again in the near future.

7. On April 4, 2011, I spoke with Mr. Doctoroff and Mr. Lack again. During this discussion, I informed them that Comcast would comply with the neighborhooding

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<sup>1</sup> *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. for Consent To Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, MB Docket No. 10-56, 26 FCC Rcd 4238, 4287 ¶ 122 (2011) (the “Comcast-NBCUniversal Order” or the “Order”).

<sup>2</sup> Letter from Daniel Doctoroff, President, Bloomberg L.P., to Neil Smit, President, Comcast Cable Communications LLC, dated March 10, 2011 (Attachment A).

condition in the *Order* but that we disagreed with how Bloomberg interpreted the condition, which interpretation I noted was inconsistent with Bloomberg's prior advocacy before the Commission. I stated the belief that it was not the Commission's intention to require widespread disruption and realignment of Comcast's existing channel lineups. Moreover, I offered several times during our discussion to engage in commercial negotiations, but Mr. Lack responded that the Order was clear and that Bloomberg was seeking immediate compliance. Mr. Lack said that the last six to seven months had not been about commercial discussions—referring to Bloomberg's filings and *ex parte* communications with the FCC in connection with the agency's review of the proposed NBCUniversal transaction—and that he thought that Bloomberg's lawyers should speak to Comcast's lawyers. Mr. Doctoroff added that Bloomberg had spent “a lot of time and money” on the FCC process, and Bloomberg expected compliance with its interpretation of the Order.

8. It is my understanding that neither Comcast nor its counsel was contacted again by Bloomberg, even though I had provided contact information for our counsel as Mr. Doctoroff had requested during the April 4th call. The next time I am aware that we heard from Bloomberg was when Bloomberg's counsel sent me a pre-complaint letter on May 26, 2011.<sup>3</sup> Comcast responded on June 6, 2011,<sup>4</sup> and again offered to engage in negotiations. Bloomberg filed its Complaint on June 13, 2011.

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<sup>3</sup> Letter from David Boies, Esq., Boies, Schiller & Flexner LLP, and Stephen Diaz Gavin, Esq., Patton Boggs LLP, Counsel for Bloomberg, to Neil Smit, President, Comcast Cable Communications, LLC, dated May 26, 2011 (Attachment B).

<sup>4</sup> Letter from Arthur R. Block, Esq., Senior Vice President, General Counsel and Secretary, Comcast Corporation, to David Boies, Esq., Boies, Schiller & Flexner LLP, and Stephen Diaz Gavin, Esq., Patton Boggs LLP, Counsel for Bloomberg L.P., dated June 6, 2011 (Attachment C).

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: Philadelphia, PA  
July 25, 2011



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Neil Smit

# Attachment A

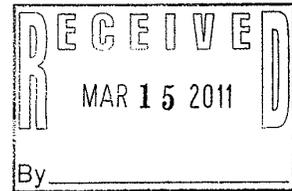
SCAN: BLOOMBERG  
cc: J. M. Smith  
SJ

**Bloomberg**

Bloomberg L.P. 731 Lexington Avenue Tel +1 212 318 2000  
New York, NY 10022 bloomberg.com

March 10, 2011

Neil Smit  
President  
Comcast Cable Communications  
One Comcast Center  
1701 JFK Boulevard  
Philadelphia, PA 19103-2838



Dear Neil:

It was good to talk to you yesterday about implementation of the decision by the FCC approving Comcast's acquisition of control of NBC Universal (the "Merger").

You asked how we view the neighborhooding requirement applicable to independent news channels, such as Bloomberg Television ("BTV"). As you are aware, the Commission conditioned its approval of the Merger on the following requirement: "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."<sup>1</sup> The Commission went on to say that it had adopted this requirement in light of the "special importance of news programming to the public interest."<sup>2</sup> BTV is clearly an independent news channel for purposes of this condition because it: (1) is unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries; (2) is unaffiliated with one of the top fifteen programming networks, as measured by annual revenues; and (3) has programming focused on public affairs and business reporting and analysis during the hours 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone.<sup>3</sup>

This condition applies to any news neighborhood that Comcast carries "now or in the future."<sup>4</sup> Accordingly, the FCC Order requires Comcast to move BTV now into any news neighborhood that currently exists on any Comcast system.

<sup>1</sup> *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, MB Docket No. 10-56 (rel. Jan. 20, 2011), App. B., at 121, see also *id.*, at 51.

<sup>2</sup> *Id.*, at ¶ 122.

<sup>3</sup> See *id.* at 51, n. 292.

<sup>4</sup> *Id.*, ¶ 122

## Bloomberg

I have attached a list of markets where Comcast currently has news neighborhoods into which BTV must be moved under the terms of the FCC's Order. This list is not intended to be exhaustive, but rather illustrative of systems where Comcast currently carries news neighborhoods in order to provide guidance to Comcast in implementing the news neighborhooding condition. On our initial review, most of these channel lineups group at least four of the major news channels in contiguous and adjacent channel positions, clearly constituting "a significant number or percentage of news and/or business news channels" as established by the FCC Order.

Bloomberg recognizes that the FCC regulations require 30 days notice to subscribers of channel changes. In light of that notice period, we believe it reasonable to request that BTV be placed into all news neighborhoods as soon as possible but certainly no later than three months from today.

I look forward to continuing our discussions next week. Congratulations again on your new position. We all look forward to working with you to effectuate the FCC Order.

Regards,



Daniel Doctoroff

**Attachment: Examples of Markets with News Neighborhoods of at Least 4 News Channels**

**1. Seattle-Tacoma, WA DMA**

Grays County, King County, Lewis County, Pacific County, and Thurston County

(CNN-44, CNN Headline News-45, CNBC-46, MSNBC-47, Fox News-48)

**2. Washington, DC DMA**

Washington, DC

(CNN Headline News-35, CNN-36, Fox News-37, MSNBC-38, CNBC-39)

Arlington, Alexandria, Prince George's County

(CNN Headline News-28, CNN-29, MSNBC-30, CNBC-31, Fox News-32)

Reston/Prince William County

(CNN-35, CNN Headline News-36, CNBC-37, MSNBC-38, Fox News-39)

Winchester

(CNN Headline News-38, CNN-39, Fox News-40, CNBC-41, MSNBC-42)

Spotsylvania County

(CNN Headline News-28, CNN-29, MSNBC-30, CNBC-31, Fox News-32)

Montgomery County

(CNBC-60, MSNBC-61, CNN-62, CNN Headline News-63)

**3. San Francisco-Oakland-San Jose, CA DMA**

San Francisco, Oakland, Berkeley, San Jose

(CNN-56, CNN Headline News-57, CNBC-58, Fox News-59, MSNBC-60)

Fort Bragg, Willits

(CNN Headline News-40, CNN-41, CNBC-42, MSNBC-43)

Sonoma, Calistoga, Napa Valley

(CNN-56, CNN Headline News-57, CNBC-58, MSNBC-60)

4. **Atlanta, GA DMA**

Atlanta, Cobb County, East Point, Stone Mountain, Walton

(CNN-34, CNN Headline News-35, CNBC-36, Fox News-37)

5. **Chicago, IL DMA**

City of Chicago Areas 1, 4, and 5

(CNN-57, CNBC-58, MSNBC-59, Fox News-60, CNN Headline News-61)

Hammond and East Chicago

(CNN-43, CNN Headline News-44, CLTV-45, Fox News-46, MSNBC-47, CNBC-48)

LaSalle, Mendota

(CNN Headline News-56, CNBC-57, CNN-58, MSNBC-59, Fox News Channel-60)

Carpentersville, Aurora, Naperville, Wheaton

(CLTV-53, Fox News-54, CNN-55, CNN Headline News-56, MSNBC-58, CNBC-59)

Romeoville

(CNN Headline News-35, CNN-36, CLTV-38, CNBC-39)

6. **Philadelphia, PA DMA**

North/West/Northwest Philadelphia

(CNN-26, CNN Headline News-27, MSNBC-28, CNBC-29)

Montgomery County (King of Prussia/Norristown)

(Fox News Channel-40, CNN-41, CNN Headline News-42, CNBC-43, MSNBC-44)

Kent County

(Fox News-25, CNN-26, Headline News-27, MSNBC-28, CNBC-29)

Pleasantville, NJ

(FOX News Channel-55, CNN-56, CNN Headline News-57, CNBC-58, MSNBC-59)

7. **Boston, MA DMA**

Cambridge, Weymouth, Lexington, Waltham

(FOX News-41, CNN-42, CNN Headline News-43, C-SPAN-44, CNBC-46)

Everett, Malden, Medford, Melrose, Winthrop

(FOX News-41, CNN-42, CNN Headline News-43, C-SPAN-44, C-SPAN2-45, CNBC-46)

8. **Minneapolis, MN DMA**

Minneapolis, MN

(CNBC-60, CNN Headline News-61, MSNBC-62, Fox News-63)

North Metro Area

(CNN-31, CNN Headline News-32, CNBC-33, Fox News-34)

Southwest Suburbs, Shakopee

(CNBC-60, CNN Headline News-61, MSNBC-62, Fox News-63)

9. **New York DMA**

Somerset County, NJ

(CNBC-36, FOX News Channel-37, CNN-38, CNN Headline News-39, MSNBC-40)

Monmouth County, NJ

(FOX News Channel-29, CNN Headline News-30, CNN-31, CNBC-33, MSNBC-34)

Mercer County, NJ

(FOX News Channel-55, CNN-56, CNN Headline News-57, MSNBC-59)

# Attachment B

**VIA E-MAIL & FEDERAL EXPRESS**

Mr. Neil Smit  
President  
Comcast Cable Communications  
One Comcast Center  
1701 JFK Boulevard  
Philadelphia, PA 19103-2838

Dear Mr. Smit:

On behalf of Bloomberg L.P. (“Bloomberg”), and pursuant to 47 C.F.R. § 76.1302(b)<sup>1</sup>, Bloomberg hereby provides notice to Comcast Cable Communications, LLC (“Comcast”) that it intends to file a complaint against Comcast with the Federal Communications Commission (“FCC”) based on Comcast’s failure to comply with the news neighborhooding condition set forth in the Commission’s Memorandum Opinion and Order granting the application of Comcast Corporation, General Electric Company (“GE”), and NBC Universal, Inc. (“NBCU”) to transfer control of licenses from GE to Comcast,<sup>2</sup> unless Comcast advises in writing within ten (10) days of this letter that it agrees to commence implementation of the news neighborhooding condition by placing Bloomberg’s video programming channel, Bloomberg Television (“BTV”), in its existing news neighborhoods, as defined herein, on all of its systems in the 35 most-populous DMAs in the United States within no more than sixty (60) days of this letter.

As you are aware, by letter dated January 21, 2011, Comcast (along with GE and NBCU) represented to the Commission that they “accept as binding the conditions and enforceable commitments included in the MO&O and expressly waive any right they may have to challenge the Commission’s legal authority to adopt and enforce such conditions

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<sup>1</sup> 47 C.F.R. § 76.1302(b).

<sup>2</sup> See *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. For Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order*, MB Docket No. 10-56 (rel. Jan. 20, 2011) (the “FCC Order” or the “MO&O”), at 121 (App. A, Sec. III.2); see also *id.* at 51, ¶ 122. Such application, the “Merger Application.”

Mr. Neil Smit  
May 26, 2011  
Page 2

and commitments.”<sup>3</sup> Notwithstanding this representation, Comcast violated the express conditions and directive in the FCC Order that independent news channels, such as BTV, must be included in existing news neighborhoods on Comcast cable systems. Comcast took this step less than three months after accepting as binding the Commission’s conditions. Bloomberg has no choice but to initiate the process of filing a complaint with the Commission because Comcast has refused to discuss in any serious manner implementation of the news neighborhooding condition with Bloomberg. Indeed, rather than taking steps to comply with the FCC Order, Comcast has taken the position that the Commission’s express direction on the neighborhooding of news channels does not require Comcast to do anything more than it was already doing and, in fact, requires no action by Comcast.

Because of the importance of a prompt resolution of this issue, Comcast’s clear and direct violation of the express terms of the FCC Order, and our hope that Comcast will reverse its position without the necessity of a formal complaint, we set forth below certain relevant facts and circumstances for your consideration.

In the FCC Order, the Commission approved what has been commonly referred to as the Comcast-NBCU merger with conditions designed to address transaction-specific harms, safeguard competition and protect the public interest.

The Comcast-NBCU merger resulted in Comcast, the nation’s largest cable operator, acquiring a controlling ownership interest in CNBC, the nation’s top-ranked business news network. CNBC is BTV’s dominant competitor. In the FCC Order, the Commission recognized that the merger would increase both Comcast’s incentive to discriminate against competitive programming as well as its ability to do so.<sup>4</sup> The Commission explicitly found that “Bloomberg TV is likely a close substitute for Comcast-NBCU’s CNBC and CNBC World Networks”<sup>5</sup> and that: “By foreclosing or

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<sup>3</sup> Letter from Kathryn A. Zachem, Vice President, Regulatory and State Legislative Affairs, Comcast Corporation; Ronald A. Stern, Vice President and Senior Competition Counsel, General Electric Company; and Richard Cotton, Executive Vice President and General Counsel, NBC Universal, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (filed Jan. 21, 2011).

<sup>4</sup> See *FCC Order* at 47-48, ¶¶ 116-118.

<sup>5</sup> *Id.* at 49, ¶ 119.

Mr. Neil Smit  
May 26, 2011  
Page 3

disadvantaging rival programming networks, Comcast can increase subscribership or advertising revenues for its own programming content.”<sup>6</sup>

In the section entitled “Conditions Concerning Carriage of Unaffiliated Video Programming,”<sup>7</sup> the Commission required that Comcast “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).”<sup>8</sup> In addition, the Commission determined that because of the “special importance of news programming to the public interest,”<sup>9</sup> independent news channels would be required to be included in any news and/or business news neighborhoods on Comcast cable systems. These conditions were the only carriage conditions imposed upon Comcast that Comcast did not offer as voluntary commitments, and as such, they were specifically highlighted by the Commission in its press release accompanying the adoption of the FCC Order.<sup>10</sup>

As a result of Comcast’s ability and incentive to act at the expense of the independent news channels, the Commission adopted a condition particularly designed to protect independent sources of news programming. The condition requires: “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.”<sup>11</sup> BTV qualifies as an independent news channel for purposes of the FCC Order because it is

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<sup>6</sup> *Id.* at 50, ¶ 119.

<sup>7</sup> *FCC Order* at 121-22 (App. A., Sec. III).

<sup>8</sup> *Id.* at 121 (App. A. Sec. III.1).

<sup>9</sup> *Id.* at 50, ¶ 122.

<sup>10</sup> See FCC Public Notice, *FCC Grants Approval of Comcast-NBCU Transaction*, Jan. 18, 2001, at 2 (“In light of the significant additional video programming Comcast will control after the merger with NBCU—programming that may compete with third-party programming Comcast currently carries or otherwise would carry on its MVPD service—the Commission requires that Comcast not discriminate in video programming distribution on the basis of affiliation or nonaffiliation with Comcast-NBCU. Moreover, if Comcast ‘neighborhoods’ its news (including business news) channels, it must include all unaffiliated news (or business news) channels in that neighborhood.”).

<sup>11</sup> See *id.* at 121 (App. A, Sec. III.2); see also *id.* at 51, ¶ 122.

Mr. Neil Smit  
May 26, 2011  
Page 4

unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries, is unaffiliated with any of the top fifteen programming networks, as measured by annual revenues, and has programming focused on public affairs, business or local news reporting and analysis during the hours 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone.<sup>12</sup>

Following the closing of the Comcast-NBCU merger, Dan Doctoroff, President and Chief Executive Officer of Bloomberg L.P., reached out on March 3, 2011 to Steve Burke, Executive Vice President of Comcast Corporation, Comcast's parent, to initiate discussions about implementing the Commission's news neighborhooding condition. Mr. Burke told Mr. Doctoroff that Comcast expected to comply with all of the conditions contained in the FCC Order but that Neil Smit, then recently appointed President of Comcast, was the appropriate contact point within Comcast for discussing next steps.

Shortly thereafter, on March 9, 2011, Dan Doctoroff and Andy Lack, CEO of Bloomberg Media Group, had a brief telephone conversation with Neil Smit attempting to begin substantive discussions about implementing the news neighborhooding condition. Mr. Smit indicated that the topic was a new issue for him and that he would need time to evaluate it. In order to facilitate discussions between Bloomberg and Comcast, Mr. Smit asked Mr. Doctoroff to send him a letter setting forth Bloomberg's view of what the news neighborhooding condition required Comcast to do with respect to BTV. Mr. Smit reiterated that Comcast fully intended to abide by the conditions set forth in the FCC Order.

The next day, Dan Doctoroff followed up on the previous day's conversation by sending a letter to Neil Smit, which is attached to this prefiling notice as Exhibit A. In this correspondence, Mr. Doctoroff explained that the plain terms of the news neighborhooding condition required Comcast to move BTV into any news neighborhood that Comcast has on any system "now or in the future", with citations to the provisions regarding neighborhooding in the FCC Order. Mr. Doctoroff also provided Comcast with examples of markets where Comcast now has news neighborhoods that do not include BTV. (As expressly indicated in the letter, this list was not intended to be exhaustive but rather illustrative in order to provide guidance to Comcast in implementing the news neighborhooding condition.) Mr. Doctoroff concluded the letter by requesting that Comcast place BTV in all news neighborhoods on Comcast cable

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<sup>12</sup> See *id.* at 51, n. 292. BTV is a worldwide 24-hour business and financial television network, whose programming is created exclusively by Bloomberg's own Bloomberg News® service.

Mr. Neil Smit  
May 26, 2011  
Page 5

systems within three months and stating that he looked forward to working with Mr. Smit to effectuate the FCC's Order.

Neither Mr. Smit nor anyone else at Comcast ever responded in writing to Mr. Doctoroff's letter. However, on March 18, 2011, Dan Doctoroff and Andy Lack spoke again to Neil Smit. During this call, Mr. Smit indicated that Comcast had a number of people studying the issue, including looking into the technological issues associated with neighborhooding, and that Mr. Smit needed more time to respond to Bloomberg with respect to other issues.

Approximately two weeks later, on April 4, 2011, Dan Doctoroff and Andy Lack had their final telephone conversation with Neil Smit prior to this prefiling notice. During this call, Mr. Smit took the position that the FCC Order did not require Comcast to do anything that it was not already doing with respect to the placement of independent news channels. Therefore, he said that there was nothing to implement with respect to the news neighborhooding condition and that Comcast had no interest in discussing implementation of the FCC Order with Bloomberg. Among other things, Mr. Smit took the position that the news neighborhooding condition applied only to news neighborhoods that might be created in the future, not to existing news neighborhoods, and that Comcast currently does not have any news neighborhoods on its cable systems.

We believe Comcast's position is flatly inconsistent with the express (and very plain) terms of the FCC's Order. As an initial matter, Comcast's claim that the news neighborhooding condition does not apply to existing channel groupings is directly contradicted by the clear language of the FCC's Order, which explicitly states that the news neighborhooding condition is triggered "if Comcast now or in the future carries news and/or business news channels in a neighborhood."<sup>13</sup> (Emphasis added). Furthermore, Comcast's argument that it currently does not have any news neighborhoods on its cable systems does not reflect the reality of its channel lineups. As Bloomberg demonstrated in Dan Doctoroff's March 10, 2011 correspondence to Neil Smit, there are numerous markets where Comcast presently groups a significant number and percentage of news and business news channels in adjacent or substantially adjacent channel positions. In the Seattle, Washington DMA, for example, Comcast has five consecutive news channels on all of its systems: CNN-44; CNN Headline News-45;

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<sup>13</sup> See *supra* note 1.

Mr. Neil Smit  
May 26, 2011  
Page 6

CNBC-46; MSNBC-47; and Fox News-48.<sup>14</sup> Likewise, in Washington, D.C., Comcast's channel lineup has five consecutive news channels: CNN Headline News-35; CNN-36; Fox News-37; MSNBC-38; and CNBC-39.<sup>15</sup> These groupings (and many others on numerous other systems) meet the Commission's (as well as any common sense) definition of a news neighborhood.

As noted above, in the FCC Order, the Commission defined a "news neighborhood" 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."<sup>16</sup> For purposes of implementation of the news neighborhooding condition, a news neighborhood should be defined to exist whenever there are four or more news channels consecutively placed or wherever there are at least four news channels located in any block of five adjacent channel positions. While a channel grouping need only contain a significant number or significant percentage of news channels to meet the definition of neighborhood set forth in the FCC Order, neighborhoods of this size rise above that standard because they contain both a significant number and a significant percentage of news channels that are substantially adjacent to one another.<sup>17</sup>

There can be no doubt that Bloomberg has the right and necessary standing to bring a program carriage complaint before the FCC against Comcast. Bloomberg is a "video programming vendor" as defined by the FCC Order and Section 616 of the Communications Act because it is engaged in the production, creation and wholesale distribution of video programming for sale.<sup>18</sup> Comcast is a "multichannel video programming distributor" ("MVPD") because it is a cable operator "engaged in the business of making available for purchase, by subscribers multiple channels of video

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<sup>14</sup> See Exhibit A, at 3.

<sup>15</sup> See Exhibit A, at 3. Comcast has a similar channel lineup in the other systems it operates in the Washington DMA, including but not limited to Montgomery County, Maryland, Arlington, Virginia and Alexandria, Virginia.

<sup>16</sup> See *FCC Order* at 121 (App. A, Sec. III.2); see also *id.* at 51, ¶ 122.

<sup>17</sup> In the FCC Order, the Commission specifically recognized that business news channels "could be considered close substitutes by viewers." *FCC Order* at 49, n.284. Accordingly, a business news neighborhood exists for purposes of the neighborhooding condition whenever a significant number or percentage of business news channels are substantially adjacent to one another in a system's channel lineup. At this time, Bloomberg has not identified any existing business news neighborhoods on Comcast systems which do not include BTV. However, should Comcast create such neighborhoods, Bloomberg intends to request BTV's inclusion in these channel groupings.

<sup>18</sup> 47 U.S.C. § 536(b); *FCC Order* at 121 (App. A, Sec. I). See also 47 C.F.R. § 76.1300(e).

Mr. Neil Smit  
May 26, 2011  
Page 7

programming.”<sup>19</sup> Comcast’s refusal to include BTV in existing news neighborhoods on its cable systems violates the neighborhooding condition contained in the FCC Order, and the FCC Order specifically provided that violations of the neighborhooding condition could be submitted to the Commission for resolution under its program carriage complaint procedures.<sup>20</sup>

Bloomberg attempted to work cooperatively with Comcast to implement the Commission’s news neighborhooding condition. However, rather than working with Bloomberg as required by the FCC Order to move BTV into news neighborhoods Comcast now carries on its cable systems, Comcast has refused to discuss in any serious manner compliance with the Commission’s requirements and taken the position that those requirements are essentially meaningless. Comcast’s refusal even to attempt to comply with the news neighborhooding condition has left Bloomberg with no choice but to send this prefiling notice.

As discussed above, the Commission has required that if Comcast “now or in the future carries news and/or business news channels in a neighborhood . . . Comcast must carry all independent news and business news channels in that neighborhood.”<sup>21</sup> Comcast is demonstrably now carrying news and/or business news channels in neighborhoods on cable systems throughout the country. Yet, Comcast refuses to include BTV, an independent news channel, in those news neighborhoods.

This refusal to place BTV in news neighborhoods places Comcast in direct violation of the FCC Order approving the Comcast-NBCU merger. Therefore, unless Comcast advises in writing within 10 days that it agrees to commence implementation of the news neighborhooding condition by placing BTV in its existing news neighborhoods on all systems in the 35 most-populous DMAs in the United States within 60 days of this letter, Bloomberg will submit this “dispute to the Commission in accordance with the Commission’s program carriage complaint procedures, 47 C.F.R. § 76.1302.”<sup>22</sup>

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<sup>19</sup> 47 C.F.R. § 76.1300(d).

<sup>20</sup> *FCC Order*, at 122 (App. A, Sec. III.4).

<sup>21</sup> *FCC Order*, at 121 (App. A, Sec. III.2).

<sup>22</sup> *See id.* at 122 (App. A, Sec. III.4).

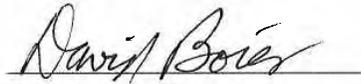
Mr. Neil Smit  
May 26, 2011  
Page 8

If there are any questions regarding this matter, please direct them to Stephen Díaz Gavin, Patton Boggs LLP, at 202-457-6340 or by email at [sgavin@pattonboggs.com](mailto:sgavin@pattonboggs.com).

Very truly yours,

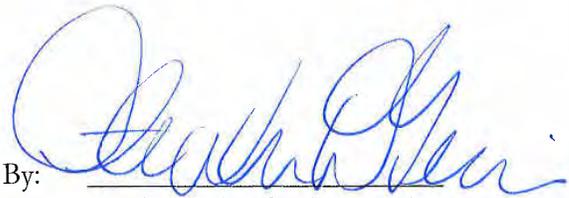
**BLOOMBERG L.P.**

By:



David Boies, Esquire  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, NY 10504

By:



Stephen Díaz Gavin, Esquire  
PATTON BOGGS LLP  
2550 M Street, N.W.  
Washington, D.C. 20037-2350

Enclosure

cc: The Hon. Julius Genachowski, Chairman, Federal Communications Commission  
The Hon. Michael J. Copps, Commissioner, Federal Communications  
Commission  
The Hon. Robert M. McDowell, Commissioner, Federal Communications  
Commission  
The Hon. Mignon L. Clyburn, Commissioner, Federal Communications  
Commission  
Mr. Daniel Doctoroff  
Mr. Andrew Lack  
Michael Hammer, Esquire  
Kathryn Zachem, Esquire

EXHIBIT A

**Bloomberg**

Bloomberg LP

731 Lexington Avenue  
New York, NY 10022

tel: 212 310 9000  
bloomberg.com

March 10, 2011

Neil Smit  
President  
Comcast Cable Communications  
One Comcast Center  
1701 JFK Boulevard  
Philadelphia, PA 19103-2838

Dear Neil:

It was good to talk to you yesterday about implementation of the decision by the FCC approving Comcast's acquisition of control of NBC Universal (the "Merger").

You asked how we view the neighborhooding requirement applicable to independent news channels, such as Bloomberg Television ("BTV"). As you are aware, the Commission conditioned its approval of the Merger on the following requirement: "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."<sup>1</sup> The Commission went on to say that it had adopted this requirement in light of the "special importance of news programming to the public interest."<sup>2</sup> BTV is clearly an independent news channel for purposes of this condition because it: (1) is unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries; (2) is unaffiliated with one of the top fifteen programming networks, as measured by annual revenues; and (3) has programming focused on public affairs and business reporting and analysis during the hours 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone.<sup>3</sup>

This condition applies to any news neighborhood that Comcast carries "now or in the future."<sup>4</sup> Accordingly, the FCC Order requires Comcast to move BTV now into any news neighborhood that currently exists on any Comcast system.

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<sup>1</sup> *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, MB Docket No. 10-56 (rel. Jan. 20, 2011), App. B, at 121, *see also id.*, at 51.

<sup>2</sup> *Id.*, at ¶ 122.

<sup>3</sup> *Id.*, at ¶ 51, n. 392.

<sup>4</sup> *Id.*, ¶ 122.

## Bloomberg

I have attached a list of markets where Comcast currently has news neighborhoods into which BTV must be moved under the terms of the FCC's Order. This list is not intended to be exhaustive, but rather illustrative of systems where Comcast currently carries news neighborhoods in order to provide guidance to Comcast in implementing the news neighborhooding condition. On our initial review, most of these channel lineups group at least four of the major news channels in contiguous and adjacent channel positions, clearly constituting "a significant number or percentage of news and/or business news channels" as established by the FCC Order.

Bloomberg recognizes that the FCC regulations require 30 days notice to subscribers of channel changes. In light of that notice period, we believe it reasonable to request that BTV be placed into all news neighborhoods as soon as possible but certainly no later than three months from today.

I look forward to continuing our discussions next week. Congratulations again on your new position. We all look forward to working with you to effectuate the FCC Order.

Regards,



Daniel Doctoroff

Attachment: Examples of Markets with News Neighborhoods of at Least 4 News Channels

1. Seattle-Tacoma, WA DMA

Grays County, King County, Lewis County, Pacific County, and Thurston County

(CNN-44, CNN Headline News-45, CNBC-46, MSNBC-47, Fox News-48)

2. Washington, DC DMA

Washington, DC

(CNN Headline News-35, CNN-36, Fox News-37, MSNBC-38, CNBC-39)

Arlington, Alexandria, Prince George's County

(CNN Headline News-28, CNN-29, MSNBC-30, CNBC-31, Fox News-32)

Reston/Prince William County

(CNN-35, CNN Headline News-36, CNBC-37, MSNBC-38, Fox News-39)

Winchester

(CNN Headline News-38, CNN-39, Fox News-40, CNBC-41, MSNBC-42)

Spotsylvania County

(CNN Headline News-28, CNN-29, MSNBC-30, CNBC-31, Fox News-32)

Montgomery County

(CNBC-60, MSNBC-61, CNN-62, CNN Headline News-63)

3. San Francisco-Oakland-San Jose, CA DMA

San Francisco, Oakland, Berkeley, San Jose

(CNN-56, CNN Headline News-57, CNBC-58, Fox News-59, MSNBC-60)

Fort Bragg, Willits

(CNN Headline News-40, CNN-41, CNBC-42, MSNBC-43)

Sonoma, Calistoga, Napa Valley

(CNN-56, CNN Headline News-57, CNBC-58, MSNBC-60)

4. Atlanta, GA DMA

Atlanta, Cobb County, East Point, Stone Mountain, Walton

(CNN-34, CNN Headline News-35, CNBC-36, Fox News-37)

5. Chicago, IL DMA

City of Chicago Areas 1, 4, and 5

(CNN-57, CNBC-58, MSNBC-59, Fox News-60, CNN Headline News-61)

Hammond and East Chicago

(CNN-43, CNN Headline News-44, CLTV-45, Fox News-46, MSNBC-47, CNBC-48)

LaSalle, Mendota

(CNN Headline News-56, CNBC-57, CNN-58, MSNBC-59, Fox News Channel-60)

Carpentersville, Aurora, Naperville, Wheaton

(CLTV-53, Fox News-54, CNN-55, CNN Headline News-56, MSNBC-58, CNBC-59)

Romeoville

(CNN Headline News-35, CNN-36, CLTV-38, CNBC-39)

6. Philadelphia, PA DMA

North/West/Northwest Philadelphia

(CNN-26, CNN Headline News-27, MSNBC-28, CNBC-29)

Montgomery County (King of Prussia/Norristown)

(Fox News Channel-40, CNN-41, CNN Headline News-42, CNBC-43, MSNBC-44)

Kent County

(Fox News-25, CNN-26, Headline News-27, MSNBC-28, CNBC-29)

Pleasantville, NJ

(FOX News Channel-55, CNN-56, CNN Headline News-57, CNBC-58, MSNBC-59)

7. Boston, MA DMA

Cambridge, Weymouth, Lexington, Waltham

(FOX News-41, CNN-42, CNN Headline News-43, C-SPAN-44, CNBC-46)

Everett, Malden, Medford, Melrose, Winthrop

(FOX News-41, CNN-42, CNN Headline News-43, C-SPAN-44, C-SPAN2-45, CNBC-46)

8. Minneapolis, MN DMA

Minneapolis, MN

(CNBC-60, CNN Headline News-61, MSNBC-62, Fox News-63)

North Metro Area

(CNN-31, CNN Headline News-32, CNBC-33, Fox News-34)

Southwest Suburbs, Shakopee

(CNBC-60, CNN Headline News-61, MSNBC-62, Fox News-63)

9. New York DMA

Somerset County, NJ

(CNBC-36, FOX News Channel-37, CNN-38, CNN Headline News-39, MSNBC-40)

Monmouth County, NJ

(FOX News Channel-29, CNN Headline News-30, CNN-31, CNBC-33, MSNBC-34)

Mercer County, NJ

(FOX News Channel-55, CNN-56, CNN Headline News-57, MSNBC-59)

# Attachment C



Arthur R. Block  
Senior Vice President,  
General Counsel and Secretary

Comcast Corporation  
One Comcast Center  
Philadelphia, PA 19103-2838  
Office: 215-286-7564 Mobile: 215-421-1000  
Fax: 215-286-7794  
ablock@comcast.com

June 6, 2011

David Boies, Esq.  
Boies, Schiller & Flexner LLP  
333 Main Street  
Armonk, NY 10504

Stephen Diaz Gavin, Esq.  
Patton Boggs LLP  
2550 M Street, NW  
Washington, D.C. 20037

**Re: Bloomberg Television**

Dear Messrs. Boies and Gavin:

I write in response to your letter dated May 26, 2011. Unless otherwise indicated, all capitalized terms have the same meaning as in your letter.

At the outset, I note that Comcast values its relationship with Bloomberg, and views Bloomberg as a respected business partner. Indeed, Comcast has voluntarily launched BTV to nearly 18 million subscribers in less than five years without any contractual obligation to do so. It has also voluntarily placed BTV in most of its systems on the same level of service on which it offers CNBC. Since the NBCUniversal transaction was announced in December 2009, Comcast has continued to expand BTV's distribution to over three million new subscribers.

Given this productive relationship, it is dismaying that Bloomberg has elected to make baseless allegations against Comcast.<sup>1</sup> Bloomberg's claim that Comcast is in violation of the FCC Order<sup>2</sup> is wholly without merit. At the most basic level, your letter is premised upon the faulty assumption that Comcast currently engages in a widespread practice of "neighborhooding" news or business news networks. This claim in turn rests entirely on a definition of a news "neighborhood" (four networks) of your own creation, which is at odds with the practices of Comcast and other MVPDs. Even more tellingly, BTV's definition of neighborhooding is inconsistent with Bloomberg's own advocacy before the FCC. The definition you propose would cause significant disruption to consumers and other cable networks beyond anything the FCC contemplated or could reasonably have required.

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<sup>1</sup> Further, in light of your decision to resort to threats of litigation rather than commercial negotiations, it was inappropriate under the applicable rules of professional ethics for external counsel to Bloomberg to contact a Comcast businessperson directly, especially when Bloomberg was on notice that Comcast is represented by external counsel in this matter. In the future, please direct all communications to either Comcast's external or internal counsel, the latter of whom Mr. Boies should be familiar with from his prior representations of Comcast.

<sup>2</sup> See *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. For Consent to assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order*, 26 FCC Rcd 4238 (2011) (the "FCC Order").

David Boies, Esq.  
Stephen Diaz Gavin, Esq.

Accordingly, we urge your client to reconsider its decision to file a complaint and instead invite your client to resume good faith commercial discussions with Comcast of the type that have been so mutually beneficial to both sides in the past.

**A. The FCC Order**

The FCC Order considered whether, *following the acquisition of NBCUniversal*, Comcast might have the incentive or ability to discriminate among programmers “on the basis of affiliation or non-affiliation.”<sup>3</sup> The Commission ultimately adopted a condition prohibiting discrimination on the basis of affiliation or non-affiliation.<sup>4</sup> The Commission also discussed and adopted the news neighborhooding condition in the context of that very focused discussion in the FCC Order.<sup>5</sup>

Comcast’s basic channel placements of BTV vis-à-vis CNBC and MSNBC were made long before Comcast ever acquired or proposed to acquire any interest in CNBC or MSNBC. Their respective channel positions are a result of this pre-acquisition history, not any discriminatory motive to advantage CNBC or MSNBC or disadvantage BTV. Accordingly, in pursuing its claims here, it is clear that Bloomberg is not attempting to remedy any discrimination arising out of the NBCUniversal transaction – the only potentially legitimate purpose of a merger condition – but is instead attempting to obtain *more favorable* treatment than it would ever have been entitled to absent that transaction.

In the end, this entire matter reflects nothing more than an attempt by Bloomberg – a multi-billion dollar financial services conglomerate that can and should stand on its own two feet in any negotiation – to manipulate the FCC process for its own narrow commercial gain.

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<sup>3</sup> See FCC Order, 26 FCC Rcd at 4287.

<sup>4</sup> *Id.* at 4358.

<sup>5</sup> It is Comcast’s position that the neighborhooding condition is prospective in nature, and only applies in the event Comcast engages in neighborhooding in the future. This is reflected in the forward-looking language of the FCC Order and the overall context of the FCC’s analysis, as well as in Bloomberg’s own advocacy before the Commission. See, e.g., FCC Order, 26 FCC Rcd at 4288 (“Our condition, however, would only take effect *if* Comcast-NBCU *undertook* to neighborhood its news or business news channels . . .”) (emphases added); see also June 21, 2010 Petition to Deny at 31 (arguing that “[a]bsent 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”). Indeed, we do not see any jurisdictional basis for the FCC to address non-transaction-specific pre-acquisition conduct in a merger condition. See FCC Order, 26 FCC Rcd at 4249. Nevertheless, because Comcast does not currently engage in neighborhooding under the definition applied by both the FCC and the industry – except perhaps in a few pilot markets (where Bloomberg is included in the neighborhood) – it is not necessary to resolve this interpretive dispute in order to conclude that Bloomberg’s complaint is without merit.

David Boies, Esq.  
Stephen Diaz Gavin, Esq.

## **B. The “Neighborhooding” Condition**

The FCC Order provides that, if Comcast “now or in the future carries news and/or business news channels in a neighborhood,” then it must include “all independent news and/or business news channels” in that neighborhood.<sup>6</sup> It defines a news neighborhood as “a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system’s channel lineup.”<sup>7</sup> The Commission characterized this as a “narrowly tailored” condition and plainly did not contemplate that it was requiring Comcast to engage in widespread re-ordering of its channel lineups.<sup>8</sup>

Your letter contends, however, that the FCC Order requires Comcast to alter radically its channel lineups across the country. To support this claim, you propose an arbitrary definition of a news neighborhood as “four or more news channels consecutively placed or . . . four news channels located in any block of five adjacent channel positions.” The notion that a collection of four channels constitutes a neighborhood for the purposes of the FCC Order is without merit for many reasons, some of the most obvious of which I will review.

*First*, no matter how one defines a “news and/or business channel,” four channels constitute a small minority of such channels that Comcast frequently carries – and plainly an insufficient number to constitute a neighborhood. In all events, Bloomberg essentially conceded that a news neighborhood is far more than four channels in its own advocacy before the Commission. Specifically, Bloomberg cited to the Commission four MVPDs (Verizon, AT&T, Dish, and DirecTV) as examples of MVPDs who engage in “neighborhooding.”<sup>9</sup> Significantly, this list *did not* include Comcast. The MVPDs cited by Bloomberg have the following “neighborhoods”:

- 15 consecutive news networks (Verizon)
- 14 out of 15 news networks (AT&T)
- 10 news networks within 11 channels (Dish Network)
- 10 news networks within 12 channels (DirecTV)<sup>10</sup>

Clearly, consistent with Bloomberg’s prior advocacy, industry practice for “neighborhooding” requires far more than four consecutive (or nearly consecutive) channels.<sup>11</sup>

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<sup>6</sup> FCC Order, 26 FCC Rcd at 4287-88.

<sup>7</sup> *Id.* at 4288.

<sup>8</sup> *Id.* at 4287-88.

<sup>9</sup> June 21, 2010 Petition to Deny, Exhibit 3, at ¶ 94 (the “June 21 Marx Report”).

<sup>10</sup> Based on publicly available information, as of June 3, 2011.

<sup>11</sup> Note that elsewhere in the proceeding Bloomberg suggested that five networks are necessary to make up a neighborhood. *See* June 21 Marx Report, n. 86. Clearly, even Bloomberg has had a difficult time coming up with a consistent definition of a news neighborhood.

David Boies, Esq.  
Stephen Diaz Gavin, Esq.

*Second*, the four-network definition proposed by Bloomberg leads to nonsensical and incoherent results. If one were to adopt a four-network benchmark, then Comcast's channel lineups would frequently have not one but several "news neighborhoods," each with small groupings of news channels. Moreover, under this approach, BTV would *already* be in a news neighborhood in many of the markets identified in its March 10, 2011 letter to Comcast.

For example, Bloomberg demands to be included in a "four channel" neighborhood that it claims exists in the Greater Boston (Cambridge, Weymouth, Lexington, Waltham) lineup. (May 26, 2011 Letter, Exhibit A). This lineup consists of CNBC (46), C-SPAN (44), CNN Headline News (43), CNN (42) and Fox News (41). Yet, using its own definition, Bloomberg is *already* included in a neighborhood in this same channel lineup: MSNBC (251), CSPAN3 (249), C-SPAN2 (247), Bloomberg (246) and Weather Scan Digital (245). There are many more instances from your letter where Bloomberg demands to be repositioned despite already residing in a four-network "neighborhood." The reality, then, is that Bloomberg is not asking for BTV to be included in "a neighborhood," but instead is seeking to compel Comcast to move BTV from one "neighborhood" into another "neighborhood" of its choice.<sup>12</sup> The neighborhooding condition and the FCC Order do not support such cherry picking and game playing – especially, as discussed below, to the detriment of other networks and consumers.

*Third*, your analysis overlooks the fact that, in adopting a "narrowly tailored" condition, the FCC made clear that it did not intend to require a wholesale reorganization of Comcast's channel lineup across its 39-state footprint – which includes over one thousand different headends with widely varying channel lineups. Simply put, every time Comcast is forced to move one channel to a location where another channel is already resident, it sets off a cascading chain reaction of channel movements that ends with a significantly altered channel lineup, substantial confusion for subscribers, and hardship for the displaced channels. Comcast explained this in filings with the Commission.<sup>13</sup> The absence of any discussion of this serious concern of consumer and channel disruption is just one indication that the FCC had in mind a *prospective* condition, not one that would cause upheaval in longstanding channel arrangements.

*Finally*, if Comcast were required to move BTV in order to comply with a "four channel" definition, then it could also be required to move a significant number of *other* news networks to comply with this definition, resulting in exponentially greater channel positioning disruption for consumers. In this situation, the FCC would likely see a flurry of complaints by entities that assert that they are news channels, *and* by networks that have been displaced and moved to other channels. Further, Comcast could find itself in an endless round of repositioning – all without having taken any action to create neighborhoods or prefer its own news channels since the close of the NBCUniversal transaction. We are confident that the FCC never intended the Order to cause the re-engineering of Comcast's existing channel lineups (and reversal of its historical editorial decisions) on anything like this scale, much less in the circumstances presented here.

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<sup>12</sup> What makes this example even more absurd is that Bloomberg is within a supposed "neighborhood" that contains a Comcast-affiliated news channel (MSNBC). That can hardly be described as discriminatory treatment.

<sup>13</sup> See *e.g.*, October 22, 2010 Notice of Ex Parte Communication.

**C. Negotiation History**

In addition to the foregoing, your recounting of our recent discussions is inaccurate and misleading. I do not think it would be constructive to review in detail our discussions over the last three months. It is worth noting, however, that in all our discussions, we have expressed our willingness to work with Bloomberg in good faith as a partner – as evidenced by the major role Comcast has played in expanding BTV’s distribution over the last few years. Notwithstanding these overtures, Bloomberg has flatly refused to engage in commercial negotiations, instead insisting that Comcast simply accede completely to its demands.

In particular, in our last discussion on April 4, Neil Smit reiterated our interest in pursuing commercial discussions with Bloomberg. Andy Lack responded that he was not interested in commercial discussions, but instead issued an ultimatum that Comcast implement Bloomberg’s reposition demands in their totality. Dan Doctoroff went on to add that Bloomberg had spent “a lot of time and money” on the FCC process and it expected compliance with its misinterpretation of the FCC Order, no matter how absurd.

At the end of this call, Mr. Doctoroff proposed that the two parties’ attorneys confer about their respective interpretations of the FCC Order. Mr. Smit agreed and forwarded contact information for Comcast’s counsel to Mr. Doctoroff. Our counsel was never contacted by Bloomberg’s counsel, however, nor were there further overtures from Bloomberg itself. Instead, we received no further communication for almost two months until you sent your complaint notice letter to Mr. Smit last week. This hardly reflects a constructive approach to our discussions.

\* \* \*

Comcast continues to stand by its offer to engage in good faith commercial discussions with Bloomberg regarding this matter. We have been strongly supportive of BTV, as illustrated by our dramatic increase in carriage of BTV over the past five years. We believe that we can advance our partnership in ways that are beneficial for both partners and do not involve the substantial investment of time, effort and money involved in litigating a program carriage complaint. If your client wishes to engage in further commercial discussions, please have them contact Greg Rigdon at 215.286.2854 at your earliest convenience.

Very truly yours,



Arthur R. Block

cc: The Hon. Julius Genachowski, Chairman, Federal Communications Commission  
The Hon. Michael J. Copps, Commissioner, Federal Communications Commission  
The Hon. Robert M. McDowell, Commissioner, Federal Communications Commission  
The Hon. Mignon L. Clyburn, Commissioner, Federal Communications Commission

# Exhibit 2

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

In the Matter of	)	
	)	
Bloomberg L.P.,	)	
	)	
Complainant,	)	MB Docket No. 11-104
	)	
v.	)	
	)	
Comcast Cable Communications, LLC,	)	
	)	
Defendant.	)	

**DECLARATION OF JENNIFER GAISKI**

1. My name is Jennifer Gaiski. My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.

2. I am Senior Vice President of Content Acquisition for Comcast Cable Communications, LLC (“Comcast Cable” and, together with its affiliates, “Comcast”). I have held that title since 2007, prior to which I was Vice President of Programming for Comcast Cable. I held these positions at all times relevant to the events discussed below. The statements made herein are based on personal knowledge or information I obtained during my employment by Comcast, and my review of certain documents.

3. In my position at Comcast, I am responsible for reviewing carriage proposals from video programming networks, negotiating and administering carriage agreements with these networks, and coordinating operations and communications with local Comcast cable systems.

**I. Negotiation and Execution of Bloomberg Television Affiliation Agreement**

4. Prior to 2006, Comcast did not have an affiliation agreement with Bloomberg Television (“BTV”).

5. In connection with its acquisition of certain cable systems from Adelphia Corp. in August 2006, Comcast acquired a number of systems that were carrying BTV under Adelphia’s ownership.<sup>1</sup> At that time, Comcast was speaking to BTV about executing a formal affiliation agreement with BTV.

6. In [REDACTED], the parties reached an agreement, and Comcast signed an affiliation agreement with Bloomberg (as amended [REDACTED], the “Affiliation Agreement”) to distribute BTV on its cable systems. The agreement did

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>1</sup> Comcast had no part in choosing BTV’s channel position on systems that carried BTV prior to Comcast’s acquisition of those systems.

<sup>2</sup> See Affiliation and Distribution Agreement by and between Bloomberg L.P. and Comcast Cable Communications, LLC dated [REDACTED]

[REDACTED]

7. Comcast began launching BTV on the level of service known as “D1” shortly after the affiliation agreement was signed in 2006 in systems that were interested in the network.

8. In 2008, Comcast selected BTV as one of only eight networks to receive widely increased distribution as a means of adding value for Comcast customers who were served by systems that underwent the process of digitizing their expanded basic level of service and were beginning to phase out their analog format expanded basic level of service. At the time, BTV had been launched across most of Comcast’s systems on the “D1” level of service.

9. By December 2009, when the Comcast/NBCU transaction was announced, Comcast was distributing BTV to approximately [REDACTED] million subscribers. By the end of 2010, Comcast’s distribution of BTV had increased to approximately [REDACTED] million subscribers. Since the closing of the NBCUniversal transaction in January 2011, Comcast’s distribution of BTV has expanded further, and Comcast now distributes BTV to nearly [REDACTED] million subscribers.<sup>4</sup>

10. In most Comcast systems, Comcast carries BTV on the same level of service as CNBC. Comcast has made this carriage decision voluntarily.

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<sup>4</sup> Comcast has also entered into launch support agreements with Bloomberg via a series of letters beginning in [REDACTED]. See Ex. 28, Attachments B, C, D, & E. The parties executed the first amendment to the Affiliation Agreement on [REDACTED] whereby they agreed to extend the initial term of the Affiliation Agreement if Comcast distributed Bloomberg to at least [REDACTED] million subscribers by the end of [REDACTED], and to at least [REDACTED] million subscribers by the end of [REDACTED]. See Ex. 28, Attachment A.

## II. Channel Placement of BTV on Comcast Cable Systems

11. Unless a cable system elects to be governed by Comcast's "Master Channel Line-Up" (described below), the channel on which newly launched networks are placed is generally decided by Comcast's local cable systems. Their decisions as to BTV's channel placement following the 2006 Affiliation Agreement were made without regard to Comcast's interests in any affiliated network. When BTV was launched broadly in 2006, its channel placement was not motivated by any intent to benefit any NBCUniversal networks, which Comcast did not even agree to acquire until December 2009—and did not acquire until 2011.

12. Instead, BTV's placement on Comcast's channel lineups, to my knowledge, has remained mostly unchanged since BTV was launched broadly across Comcast's footprint beginning in 2006. As discussed below, BTV was not placed near other news networks in the 1–99 channel range when it was launched, but instead was generally placed in channel positions above 100 with other digitally delivered channels launching at that time. There are a number of reasons for this.

13. First, BTV was initially launched on "D1" (a digital level of service). Local cable systems generally avoid assigning digital networks channel positions in the 1–99 range, the portion of a system's lineup originally available to analog subscribers, because doing so would degrade the experience of customers with analog levels of service. Assigning digital networks in this range would cause customers who only receive analog levels of service to encounter a number of blank channels when reviewing what would otherwise be the analog portion of Comcast's channel lineup.

14. Second, by 2006 and 2007, when Comcast was beginning to launch BTV in many of its systems, networks that had launched years or decades earlier (including

some news networks) had already taken up most if not all of the channel positions near news networks in the 1–99 range of channels. These include many of the most popular networks which are highly viewed, and consumers have come to expect them at a particular channel location or in a particular channel range. Local cable systems therefore try to avoid relocating networks from these established channel positions due to the fact that it very often causes customer confusion and frustration. In addition, networks have told me that moving a network from its long-established channel position can have a negative effect on the network’s Nielsen ratings.

15. Third, the channels in the 1–99 range include broadcast channels that have “must-carry” rights (established by federal statute) and are required to be carried in their off-air channel positions or other positions where they have had historical carriage, as well as public, educational and government (“PEG”) channels carried at channel positions specified or expected by local franchise authorities. This would have further complicated any effort to place BTV in the 1–99 range.

16. Fourth, to the extent that local systems consider the type of content offered by a new network when determining where to place it in a channel lineup, even if positions near news channels in the 1–99 channel range had been available in 2006, it is not clear that it would have been appropriate for BTV to be placed closer to broad-based consumer-focused news networks like CNBC, MSNBC, CNN, and Fox News because BTV itself was not a broadly-distributed, highly-viewed channel at the time.

17. Nevertheless, on a number of cable systems, Comcast has voluntarily assigned BTV a channel position near other news networks. Given BTV’s relatively recent launch and the historical constraints described above, BTV has more frequently

been assigned to channel positions near other recently launched satellite-delivered digital news and business news networks, such as Fox Business Channel (launched in 2007), than to channel positions near CNN and CNBC (launched in 1980 and 1989, respectively).

18. Moreover, at Bloomberg's request, Comcast entered into discussions in 2010 about relocating BTV to different channel positions located in the 1-99 range in certain major markets. Comcast was a willing participant in these discussions—I personally participated in at least one or two of them—and made a number of counteroffers. After several months of discussions and despite our attempts to offer a commercial arrangement that would be satisfactory to Bloomberg, the parties were unable to come to an acceptable commercial arrangement.

### **III. Neighborhooding on Comcast Systems**

19. Because of the constraints discussed above, Comcast has not attempted broadly to reorganize its channel lineups to align networks (including news networks) by genre.

20. To the extent that Comcast has conducted limited experiments with genre-based channel alignment, it has only done so in three- and four-digit channel ranges which by the sheer volume offers more channel location choices (100 to 9999 as opposed to 1 to 99) and thereby provides Comcast flexibility to build genre-based neighborhoods with space in between each neighborhood in order to accommodate new channels when they launch and existing channels that may alter their formats and/or subject matter.

21. In particular, Comcast has experimented with a genre-based standard definition "Master Channel Line-Up" ("MCLU") in systems serving parts of the

Indianapolis, Indiana DMA (approximately [REDACTED] customers). The MCLU has also been implemented in a small number of HD lineups in Comcast's footprints.

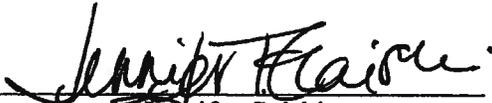
22. In connection with the MCLU channel realignments, Comcast has included BTV in all broad groupings of satellite-delivered news channels.

23. With respect to the MCLU, Comcast has intentionally limited the channel realignments to networks in channel positions 100 and over, which are typically sold to customers in digital and HD levels of service. Comcast has avoided realigning networks within the 1–99 channel range, where broadcasters' must-carry rights make more systematic realignments difficult if not impossible to administer, and where disruption to customers and networks could be substantial.

24. For example, in order to avoid and limit customer confusion in connection with the MCLU test in systems serving the Indianapolis area, Comcast does not relocate channels in the 1–99 channel block, but instead Comcast systems duplicate carriage of such networks to a second channel location in an appropriate "neighborhood" above channel 100. This is sometimes referred to as "dual mapping." For example, in the Logansport, Indiana lineup, CNN (as distributed in the standard definition format) is displayed both on its original channel 32 as well as on channel 106, where it appears in a group of 16 adjacent news channels. In addition, CNN (in its high definition format) is located on channel 1106 amongst the same group of 16 adjacent news channels (in high definition format).

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: Philadelphia, PA  
July ~~26~~ 2011

  
\_\_\_\_\_  
Jennifer Gaiski

# Exhibit 3

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

In the Matter of	)	
	)	
Bloomberg L.P.,	)	
	)	
Complainant,	)	
	)	MB Docket No. 11-104
v.	)	
	)	
Comcast Cable Communications, LLC,	)	
	)	
Defendant.	)	

**DECLARATION OF JAY KREILING**

1. My name is Jay Kreiling. My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.
2. I am Vice President, Video Services, of Comcast Cable Communications, LLC (“Comcast Cable” and, together with its affiliates, “Comcast”). I have held that title since 2007, prior to which I was Vice President, Product Management, West Division. I held these positions at all times relevant to the events discussed below. The statements made herein are based on personal knowledge or information I gained during my employment by Comcast, and my review of certain documents.
3. In my position at Comcast, I am responsible for a variety of video product management initiatives, working closely with corporate, division, and regional management to implement initiatives to achieve the objectives of the video business unit.

**I. Introduction**

4. This declaration is prepared in support of Comcast's Answer to the complaint Bloomberg L.P. ("Bloomberg") has filed with the Federal Communications Commission alleging that Comcast is in violation of the "News Neighborhooding Condition" (hereinafter the "Condition") in the Comcast-NBCUniversal Order.<sup>1</sup> I understand that Bloomberg takes the position that the Condition requires Comcast to place Bloomberg Television ("BTV") and any other independent news channel "in any channel grouping containing at least four news channels within a block of five adjacent channel positions" (Compl. § VIII(d)) and is seeking a Commission order requiring Comcast "to carry BTV in any channel grouping containing at least four news channels within a block of five adjacent channel positions on any Comcast headend in the . . . 35 most-populous [Designated Market Areas ("DMAs")] that carries BTV" (Compl. § VIII(e)).

5. I also understand that Bloomberg's complaint is intended primarily to relocate BTV (and by extension all independent news networks) into channel groupings with other news networks such as CNBC, MSNBC, and Fox News Channel (Compl. § VI.C, ¶¶ 59–65). Some of these news networks, on many Comcast systems, are currently positioned on channels below 100. On Comcast headends in which two or more such channel groupings exist, I understand that Bloomberg would have the Commission direct Comcast to place BTV in all such channel groupings (Compl. § VIII(e)).

6. Part II of this declaration discusses how channel relocations such as those sought by Bloomberg can result in significant disruption to affected programming networks and

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<sup>1</sup> *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. for Consent To Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, MB Docket No. 10-56, 26 FCC Rcd 4238, 4358, Appendix A, § III (2011) (the "Comcast-NBCUniversal Order" or the "Order").

customers. This includes a discussion of the “domino effect” that can result from channel realignments of the magnitude that may result should Bloomberg’s complaint prove successful. Put simply, realigning even a few channels in channel blocks that have few, if any, unoccupied display channels can require the relocation of multiple additional channels as each displaced channel has to find a new home. This is particularly the case in channel positions 1–99 because many of the channels located in positions below 100 are there pursuant to must-carry obligations and Comcast has less flexibility with regard to positioning those channels. In addition, many of the networks located in positions below 100 have been located at those positions for years in most markets (and long before BTV was launched), and as such, viewership habits among our customers are well established. Thus, channel realignments, particularly in channels below 100, can significantly disrupt the settled expectations of customers and the networks themselves.

7. Part III of this declaration discusses the burdens and costs of channel relocations to Comcast itself. These include: (1) notifying and educating customers about upcoming channel changes; (2) degradation of customer care occasioned by spikes in call center volume; (3) updating interactive programming guides and other channel directories and databases; and (4) undertaking physical engineering changes at system headends.

8. Part IV of this declaration discusses Comcast’s most recent experience with large-scale channel realignments in the context of its project known as the “Master Channel Line-Up” (“MCLU”) and the significant efforts Comcast took to minimize the cost, burdens, and disruption associated with the transition to new channel lineups.

**II. Channel Relocations Can Result in Significant Disruption to Affected Programming Networks and Customers**

9. Large-scale channel realignments, particularly in channels below 100 or in any other channel location with few unoccupied channels, can cause significant disruptions to numerous programming networks and may give rise to customer confusion and dissatisfaction.

**A. The “Domino Effect” and Disruption to Programming Networks**

10. Simply put, the type of channel realignments described in Paragraph 9 above can have ramifications throughout a cable system’s lineups as the cable operator has to find a place for channels that are moved to make room for the newly realigned channel or channels. For Comcast to move Network X to a channel position below 100, it may have to displace and relocate Network Y; Comcast must then in turn find room for Network Y and so forth. I refer to this as the “domino effect.”

11. By way of example, in the Atlanta DMA channel positions 34 through 37 on Comcast’s systems are occupied by CNN, CNN Headline News, CNBC and Fox News, respectively. Placing BTV adjacent to this channel grouping would require Comcast to displace either TLC (at 33) or A&E (at 38). If (as would likely be the case) more independent news channels had to be relocated to this “neighborhood,” other affected networks could include TBS (at 39) and Discovery Channel (at 40). Moving these channels may in turn require moving other channels, which would likely lead to the displacement and relocation of additional channels.

12. This problem expands geometrically as the number of networks to be relocated increases. In other words, the domino effect amplifies the disruption that other cable networks (and consumers) face as a result of channel movements. In my view, the domino effect would be particularly notable in this case because the channel realignment would presumably not involve BTV alone. Rather, if the Commission were to adopt Bloomberg’s definition of a news

neighborhood, Comcast might be required to move all independent news networks into a news neighborhood with BTV. Moreover, as Bloomberg acknowledges, Comcast could be required to move channels to create multiple such news neighborhoods on many Comcast systems (Compl. § VIII(e)). Further, it is not at all clear that the realignment would be a one-time event. Over the next seven years, it is possible that Comcast might be required to realign any news neighborhood each time an independent channel adopts or abandons a news format or each time a channel loses or acquires status as an independent network. Such ongoing disruptions and dislocations stand in marked contrast to the kind of positive customer experience Comcast was seeking to engender through its MCLU program, which is discussed below.

**B. Channel Realignments Can Result in Customer Confusion and Dissatisfaction**

13. Channel realignments can also result in negative customer experiences. It is my understanding that channels currently located in positions 1–99 are among the most likely to be affected should Bloomberg prevail in its complaint. The channels in the 1–99 range are typically the “Basic” and “Expanded Basic” tiers of service, which historically were delivered in analog format, and are typically channels with the longest tenure of carriage. The display channel positions were determined (in part) by timing of when the channel was added to the system (based on network channel capacity and timing of securing distribution agreements with Comcast or preceding MSOs), as well as by the tier of service that the channel was carried on (i.e., Basic or Expanded Basic). As Comcast and other operators expanded their channel capacity through rebuilds and new networks (including BTV) arose, “digital” tiers of service were created, with display channels typically being 100 and above for the digital tiers of service. As broadcasters converted to digital delivery and created multicast feeds, these channels were also added in the 100-and-above range of display channels.

14. Over time, channels may be moved to different tiers of service, based on customer appeal, carriage renewal negotiations with the operator, and other factors. However, it is atypical to change the display channel of a given network, even if the tier of service is changed. Regular viewers of the networks develop viewership habits and become accustomed to finding networks on their established display channels. Thus, moving these channels from their customary positions has the potential to cause significant confusion to Comcast's customers as they are no longer able to find their favorite channels in the expected locations. This is particularly the case given that some of the channels most likely to be affected by such channel realignment are popular, highly viewed channels, many of which existed years before BTV (although the particular channels affected will vary by each channel lineup and the extent of the changes required).

15. The confusion created by relocating such long-standing and popular networks may also cause a spike in customer care call center volume as customers call with questions about channel changes. Spikes in customer care call center volume may in turn cause an across-the-board degradation in the quality of customer service that Comcast is able to offer. Customer service representatives engaged in answering questions regarding new channel placements would be unable to respond to calls with more conventional billing questions or servicing issues. Further, with such a spike in calls to customer service, any customer who calls Comcast customer care following a channel realignment—whether to question the realignment or for another reason—may need to wait much longer than usual to speak to a customer care representative.

### **III. Channel Realignments Impose Costs and Burdens on Comcast Itself**

16. Large scale channel realignments can also impose costs and burdens on Comcast itself.

**A. Notice Requirements**

17. For instance, the Commission’s rules and Comcast’s agreements with LFAs, cities, counties, and other governmental organizations authorized by states to regulate cable television service require Comcast to provide notice to the LFAs and customers from 30 to 60 days before it changes the positions of any channels on headends serving the relevant local franchise area. *See generally* 47 C.F.R. § 76.1603(b), (c). The scope of channel changes that would be required by the mandate that Bloomberg seeks would require customer communications far beyond a basic LFA notice, in that we would be changing the channel locations of many of the most watched networks on our lineup. The development, production, and delivery of multiple notices to customers to prepare them for the changes would cause substantial expense for Comcast.

**B. Updating Interactive Programming Guides, Channel Directories, and Databases**

18. In addition, Comcast would have to update multiple internal and external databases every time a display channel location is changed, including addressable digital controllers, guide databases, customer care databases, and other reference resources (print guides, newspaper TV listings, online TV listings, etc). For the mass relocation sought by BTV on a one-time basis, the expense and man hours required to execute the customer notification and database updates would easily total [REDACTED] of dollars. Moreover, Comcast would have to incur costs related to updating the internal and external databases again if Comcast were required to modify lineups to add or delete channels as they gain or lose eligibility for inclusion in the news neighborhood.

**C. Customer Care Costs**

19. Also, as discussed above, large scale channel realignments may cause a spike in customer care call center volume as customers call with questions about channel changes. The average call-handling cost in our call centers is approximately [REDACTED] Moreover, where

Comcast anticipates the spike in calls to be particularly extensive, Comcast will need to hire and train additional personnel to deal with the increased call volume. As an example, if only [REDACTED] of our customers contact Comcast as result of the changes to their channel lineup, Comcast would take over [REDACTED] incremental phone calls at a cost of over [REDACTED] million. Again, this would be only a hypothetical analysis of the potential one-time customer care costs related to creating a news neighborhood and does not account for the ongoing costs that would be incurred if Comcast is required to repeatedly modify its lineups to add or delete channels as they gain or lose eligibility for inclusion in the news neighborhood.

#### **D. Physical Engineering Costs**

20. Channel realignment also requires Comcast to perform physical engineering work at each affected system headend. Typically there are minimal physical engineering changes associated with channel realignments on any given system because Comcast has completed migrating approximately [REDACTED] of its expanded basic lineups to digital. Nevertheless, given the number of unique channel lineups Comcast has [REDACTED] even a single change creates exponential updates that must be made across lineups. Again, this would be exacerbated because the channel realignment sought by Bloomberg would likely not be a one-time event, but would continue over time as networks adopt or abandon news formats or acquire or lose independent status.

#### **IV. Comcast's Experience with its Master Channel Line-Up**

21. Of course, many of the disruptions, costs, and burdens associated with channel realignments can be managed if the channel realignment is carefully planned and provides for enough time for Comcast to educate consumers about the changes. Indeed, Comcast's MCLU trial serves as an example of the intensive efforts required effectively to manage channel realignments. In that case, Comcast carefully selected systems serving a limited population where

a channel realignment would demonstrably improve the customers' experience. The trial location—several suburban headends in the Indianapolis market—made an excellent test bed because acquisitions and consolidations over the years had created a situation where contiguous communities featured channel lineups with little commonality.

**A. Channel Organization**

22. In order to create a logical organization of channels by genre, while also minimizing customer disruption, Comcast assigned channels by genre using reasonably large channel groupings. Genres such as Sports, Kids, Premiums, News & Info, and general entertainment networks were created with each genre grouping typically containing anywhere from 10 to 25 networks. Comcast also assigned channels by genre to blocks of 100+ display channels (for example, channels 200–300), while leaving display channels 1–99 unchanged. This was done so that customers accustomed to going to a specific channel (34 for ESPN, for example) could continue to find their programming with no disruption, while customers who were interested in exploring channels by a similar genre could do so.

23. In addition, because many channels now have both a standard definition (“SD”) and high definition (“HD”) feed, Comcast also arranged for the HD channels to “mirror” the SD channels in the channel range of 1000–1999, so that a customer could easily find the HD channel from the SD channel, or vice-versa (for example, ESPN SD would be on channel 207, and ESPN HD would be on channel 1207).

24. Given this organization, a customer would be able to find many channels on three different display channels on the lineup. In the example cited above, ESPN SD could be found on its longstanding slot at channel 34 (in the two-digit display channel where customers are accustomed to finding it), and also on channel 207 (organized by genre with other SD sports

networks). Finally, customers could also find ESPN HD on channel 1207, again organized by genre with other HD sports networks.

**B. Phased Implementation**

25. Comcast also adopted a phased approach to the MCLU trial. Phase I involved moving all HD channels to channel positions 1000–1999. This allowed Comcast to coordinate the HD channel realignment with the introduction of new HD content in the trial markets and with other Comcast initiatives that might also cause some customer disruption.

26. Phase II involved realigning all SD channels to channel positions 100–999, and Hispanic and International (SD) channels to channel positions 2000–2999. (As noted above, the HD and SD lineups were designed to mirror one another.) Also, to ease the transition for customers, Comcast worked to ensure that the SD channels that changed position would be channels with smaller viewing audiences. To further ease the transition, Comcast left channels 1–99 unchanged, allowing customers to continue to find long-established channels at familiar locations while becoming acquainted with the new arrangement and learning the new channel locations.

**C. Customer Outreach**

27. Comcast also adopted a multi-pronged strategy for communicating with its customers about the channel realignment. Outreach in advance of the channel changes was accomplished through numerous complementary means, including direct mail, targeted emails, bill inserts, posters, channel crawls, door hangers, and community partner efforts. Finally, to support the customer through the transition process Comcast delivered a full-color, genre-based channel lineup to customers by direct mail and as a PDF document delivered by email. Comcast also implemented a microsite with the MCLU design, personalized zip-code lookup, PDF downloads, and FAQs, as well as Interactive Voice Response (“IVR”) messaging to address basic

questions and direct customers to the microsite for further information. The customer communications about the changes were typically begun approximately 60–90 days in advance of the changes, with the frequency of communications increasing as the dates for the changes approached. Comcast conducted research with customers after the changes were implemented, and they were typically well-received, with most customers being aware of the changes ahead of time due to the numerous communication tactics employed.

28. In my view, advance outreach is especially important to minimizing customer disruption resulting from major channel realignments. In addition, an effort to organize channels by “neighborhood,” or genre, needs to be a project that encompasses the entire channel lineup and not a single genre of channels, such as news. In my opinion, while customers reacted favorably to the MCLU trial, the changes would not have been as well received had we (1) implemented the strategy solely on news channels, and (2) affected channels 1–99, where viewership habits are most established. The strategy implemented with the MCLU program allowed customers a choice—they could continue to find their most-viewed channels in their customary channel location or, if they wished to explore channels in a genre similar to channels they already liked, they could easily do so by navigating to the genre-based channel “neighborhoods” (for either SD or HD channels). If the company were required to accomplish a large-scale channel reassignment of the sort advocated by Bloomberg on a flash-cut basis, it would therefore be my expectation that such action would result in wide customer disruption and dissatisfaction. In addition, such disruption would not be a one-time event, but would continue over time as channels change, adopt, or abandon news formats, or acquire or lose status as independent news channels.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: Philadelphia, PA  
July 26 2011

  
\_\_\_\_\_  
Jay Kelling

# Exhibit 4

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

In the Matter of	)	
	)	
Bloomberg L.P.,	)	
	)	
Complainant,	)	
	)	
v.	)	MB Docket No. 11-104
	)	
Comcast Cable Communications, LLC,	)	
	)	
Defendant.	)	

**DECLARATION OF MICHAEL EGAN**

1. My name is Michael Egan. I have over 30 years of experience working in the cable television industry, first entering the business in 1979 as Producer and Production Manager for Satori Productions, a New York City television production company. Thereafter, I joined Cablevision Industries (“CVI”), where I worked from 1980 to 1996. My initial position was corporate Director of Programming, and with the continued expansion of my responsibilities, I became Senior Vice President of Programming and Product Development and a member of the senior management team. During my tenure with the company, CVI grew from 38,000 to 1.25 million customers, becoming the eighth largest cable operator in the United States, owning and operating cable systems in 16 states.

2. As a senior executive at CVI, I was involved in all aspects of cable operations and strategic planning, from policy development to system and content acquisitions. Regarding content specifically, I negotiated affiliation agreements encompassing license fees, marketing support, retransmission consent, carriage requirements, and other arrangements with cable and broadcast programmers. I also supervised all aspects of channel lineup

development, advertising sales, copyright administration, managed the company's introduction of new products, and led CVI's investments in the start-up cable networks Golf Channel, Food Network, and Sunshine Network. As head of all production activities for the company, I was responsible for all regional television studios and local programming departments. Through the years, CVI won many honors for excellence in production and programming from local and national organizations, including NCTA, NFLCP, and local Emmys.

3. In 1996, I co-founded Renaissance Media, LLC ("Renaissance"), which acquired a number of cable systems in partnership with private equity investors. In addition to my involvement in devising the business plan and the partnership structure, raising capital, and analyzing and bidding on cable properties for Renaissance, I led corporate and field efforts in programming and ad sales.

4. During my 19-year tenure at CVI and Renaissance, I worked continuously with programmers as they sought network launches, initial or incremental distribution via new launches, and/or tier and channel repositioning; proposed programming and/or branding evolutions of existing services intended to drive awareness and viewership; and argued for new or revised business arrangements to address dynamic marketplaces. At the same time, I approved all cable system channel lineup changes, including additions, deletions, and realignments of all channels, ensured compliance with programmer affiliation agreement covenants, and worked with the regional and local cable system management teams to implement changes in the least disruptive manner possible for our customers.

5. After the sale of the Renaissance properties in 1999, I founded Renaissance Media Partners, LLC, providing strategic analysis and business development expertise to multichannel programmers and distributors as well as technology companies, enlisting the

services of industry colleagues, as needed. Projects have included: expert witness testimony (twice in FCC proceedings) for two top-five cable MSOs; expert witness service for the major college and professional sports leagues before the U.S. Copyright Office; cable system operational turnaround for an independent operator; strategic analysis of affiliate agreements for a major cable programmer; programming analysis for three of the top-five cable MSOs; and extensive brand research, programming development, and affiliate agreement negotiations for the anticipated national launch of an independent programming network. In addition, I led the development of a new national museum that opened to great acclaim, winning several industry awards for its cutting-edge multimedia productions. It is based on my extensive production, programming, operations, and related cable industry experience, in addition to any other sources noted below, that I provide my expert opinion with respect to certain issues relevant to this matter.

6. I have been asked by counsel for Comcast Cable Communications, LLC (“Comcast”) to assess from a cable operator and programming expert’s perspective, (1) the claim made by Bloomberg L.P. (“Bloomberg”) in its Complaint filed June 13, 2011, that Comcast now extensively groups news channels into “news neighborhoods” in the markets in which it operates cable systems in the Top 35 TV HH DMAs, (2) whether Bloomberg’s definition of a “news neighborhood” as four news channels within five channels represents a reasonable understanding of what would constitute a “news neighborhood” from a customer or industry standpoint, and (3) the impact of the repositioning of Bloomberg Television (“BTV”) requested by Bloomberg, as well as the accompanying possible repositionings of other independent news channels, on Comcast, its customers, and other networks distributed on the affected cable systems. I have reviewed the Complaint and its exhibits as well as the information I requested be provided to me (to the extent it was available in the abbreviated

period for responding to the Complaint) from counsel for Comcast. For the purposes of this Declaration, I have adopted Bloomberg's approach of focusing on the 26 DMAs (out of the top 35) where Comcast operates (the "Relevant DMAs").

7. In summary, based on my industry experience, review of the relevant materials, and the production of empirical data and analysis thereof, my conclusions are:

(a) Bloomberg's proposed definition of a neighborhood is not consistent with either the purposes of neighborhoods or industry neighborhooding practice as established by leading MVPDs.

(b) The vast majority of Comcast's cable systems in the Relevant DMAs do not deploy news neighborhoods when evaluated by either the purposes of neighborhoods or industry practice.

(c) Comcast's small groupings of news channels are typical of those found in many, but not all, of the cable systems owned by the Top 10 MSOs throughout the relevant DMAs; were created in many, perhaps most, cases more than 10 years ago, often by the previous owners from whom Comcast acquired the systems; and are the vestiges of an industry practice abandoned long ago in such systems due to the evolution of the cable business from analog to digital video distribution technology.

(d) In these markets, Comcast distributes BTV to a greater proportion of its customers than the multichannel industry average, and its channel assignments for both BTV and CNBC are consistent with those of its MSO peers.

(e) While realigning Comcast's channel lineups to accommodate Bloomberg's request would enhance Bloomberg's business interests, it would also disrupt customers without providing any significant benefit to them, harm the

interests of other programming networks (including some not affiliated with Comcast), possibly breach some of Comcast's programming affiliation agreements, and impose a significant cost on Comcast to accomplish the moves in the least disruptive manner possible. If Comcast were required to move other independent news channels as well, these problems would be multiplied many times over.

**I. Methodology**

8. To determine the extent to which Comcast and the other nine of the Top 10 cable MSOs, as well as the two DBS services, DISH and DirecTV, and the two large regional phone companies, Verizon and AT&T U-Verse ("Top 14 MVPDs")<sup>1</sup> deploy news neighborhoods in their multichannel distribution systems, I requested and was provided channel lineups from Tribune Media Services ("TMS") for all of their systems in the Relevant DMAs. Per SNL Kagan, the Top 14 MVPDs comprise 96% of all multichannel video subscribers in the Relevant DMAs. I requested and was provided the services of Compass-Lexecon to serve as a data gathering, storage, and analytical resource.

9. I then categorized every channel carried on every one of these cable, phone company, and DBS systems (a total of 1,072 channel lineups) as a "news" or "not news" channel. I further classified every news channel by language, resolution, and whether or not it was independent. While I performed much of the work myself, I also employed the services of two cable television professional colleagues, each of whom has worked in the cable business for more than 20 years. I reviewed their work. We incorporated into our definitions of a news channel and an independent news channel the language found in the

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<sup>1</sup> A multichannel video programming distributor ("MVPD") is a service provider delivering video programming services, usually for a subscription fee. These operators include cable television, direct-broadcast satellite providers ("DBS"), and regional phone companies that deliver video programming services.

Comcast-NBCUniversal Order,<sup>2</sup> as well as prior FCC guidance on “news” and “public affairs” programming. In addition, we used our combined cable and broadcasting television industry knowledge, information gathered from the websites of TV stations and networks, TV Guide, tvguide.com, titantv.com, zaptoit.com, and any other sources cited herein.

10. Notably, in doing this research and categorization, I determined that Bloomberg had left out of its list of news networks several national news networks carried widely by Comcast and other MVPDs, such as Current TV, MHz Worldview, WORLD, and The Weather Channel, in addition to numerous local news channels.<sup>3</sup> As a result of these omissions, Bloomberg did not include these news channels in its analysis and conclusions regarding either the number of news channels carried by Comcast or the alleged existence of news neighborhoods within the Comcast lineups.<sup>4</sup> Additional details of my categorization methodology for news channels, news channel neighborhoods, and independent news channels are attached as Exhibit A. A list of the channels categorized as news channels for all of the Top 14 MVPDs and a list of those channels categorized as independent news channels on the Comcast systems are attached in Exhibits B and C.

## **II. Bloomberg’s Proposed Standard For A News Neighborhood Does Not Meet Either A Common Sense Standard Or That Set By Other Leading Multichannel Television Distributors**

11. While I am not aware of a generally-accepted definition of a news neighborhood among industry professionals, I am familiar with the term, its objectives, and

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<sup>2</sup> *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. for Consent To Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, MB Docket No. 10-56, 26 FCC Rcd 4238, 4287 ¶ 122 n.292 (2011) (the “Comcast-NBCUniversal Order” or the “Order”).

<sup>3</sup> *See Bloomberg L.P. v. Comcast Cable Communications, LLC*, Complaint, MB Docket No. 11-104 (June 13, 2011) (“Compl.”), Ex. F (Declaration of Gregory S. Crawford) App. B.

<sup>4</sup> *See* Compl. ¶ 76.

its practice in the multichannel industry. Rather than choosing an arbitrary and minimal fixed number of channels to determine if a grouping rises to the level of a neighborhood or basing that conclusion on an esoteric and academic statistical computation to conclude that the group was “probably caused by something other than mere chance”<sup>5</sup>, my experience informs me that the evaluation should be based on behavior in the actual marketplace. First, I examined news channel groupings in terms of how well they meet both an MVPD’s objectives for a neighborhood and their utility for the customer; in other words, how well the existing groups measure up to the design intent of a neighborhood. Second, I evaluated groupings by comparing them to industry practice. This approach illuminated the wide range of practices existent in the marketplace today as well as where Comcast fits in among them. I discuss both methodologies below, reaching similar conclusions via each.

**A. Analyzed By Neighborhood Objectives**

12. Neighborhoods of channels are designed to enhance the viewing experience by more easily allowing the user to remember, when faced with hundreds of channel choices, where to go “on the dial” for the genre he/she is seeking at that moment and then, once there, to easily “surf” within the genre. In addition, the neighborhood is meant to improve the customer communication abilities of the distributor by allowing it to portray and describe in simple and easily-understood images and messages the programming offered in its service. Three examples of customer communication materials employed by Time Warner Cable (“TWC”) and Insight Communications Company (“Insight”) to announce the introduction of genre neighborhoods and explain their benefits are included in Exhibit D.

13. If a distribution system carries, for example, 15 total news channels and delivers eleven of them in a group of substantially adjacent channels, does that achieve the

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<sup>5</sup> Compl. ¶ 75.

objectives of a news neighborhood? Probably so, as it contains far in excess of one-half of the total news menu on the system, enabling the TV news surfer to easily recall the location of most of the news channels and then readily access nearly all of them. Likewise, the print and on-screen TV guides and the media advertisements used by the marketer can easily communicate the system's news content by picturing that news block (as well as any other genre channel blocks, *e.g.*, music, sports, etc.). On the other hand, on the same system offering 15 total news channels, a group of just five news channels would likely be found seriously wanting by both the viewer and the marketer. As a result, a logical, simple and effective standard for a news neighborhood could be based on the percentage of news channels carried by the system that the neighborhood comprises. In contrast to Bloomberg's suggested fixed number of channels regardless of the number of news channels on the system's menu (which becomes increasingly meaningless as the total of news channels carried rises) such a standard has the advantage of automatically adjusting for size. Common sense suggests the percentage must represent a significant majority, and a truly effective neighborhood might well require inclusion of two-thirds (66%) or more of the news channels.

14. With this in mind, it is revealing to see a typical Comcast channel lineup's news grouping. For example, the group in headend [REDACTED] in the Seattle, WA DMA (a representative Comcast headend and a system cited by Bloomberg in the Complaint as one having a news neighborhood) clearly falls short of meeting the objectives of a news neighborhood.<sup>6</sup>

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<sup>6</sup> See Compl. Ex. B.

**ALL NEWS CHANNELS CARRIED ON THE LINEUP**

(Shading = Grouping of News Channels)

1	CNN
2	HLN
3	CNBC
4	MSNBC
5	FNC
6	NWCN
7	TVW
8	CSPAN
9	CSPAN2
10	TWC
11	KCPQDT2
12	WTHRSCN
13	CURRENT
14	BLOOM
15	FBN
16	CSPAN3

5 of 16 News Channels  
(31%)

**B. Analyzed By Industry Practice**

15. Bloomberg’s proposed standard is wholly inconsistent with industry practice.

Four of the Top 14 MVPDs unquestionably do deploy news neighborhoods almost universally throughout their distribution systems in these markets. A lineup is depicted below for each of the four listing all news channels carried on a typical system with those in the news neighborhood highlighted. The contrast of their practices with that of Comcast is stark and telling.

ALL NEWS CHANNELS CARRIED ON THE LINEUPS<sup>7</sup>

(Shading = News Channel Grouping)

	<u>AT&amp;T</u>	<u>VERIZON</u>	<u>DIRECTV</u>	<u>INSIGHT</u>	<u>COMCAST</u>
1	CNN	CNN	FSTV	ICN6	CNN
2	HLN	HLN	CSPAN	FNC	HLN
3	CNNI	CNBC	CSPAN2	CNN	CNBC
4	FNC	MSNBC	NEWSMIX	HLN	MSNBC
5	FBN	BLOOM	BLOOM	BLOOM	FNC
6	MSNBC	CNNI	CNBC	CNBC	NWCN
7	CNBC	CNBCWLD	MSNBC	MSNBC	TVW
8	CNBCWLD	BBCWLD	CNBCWLD	FBN	CSPAN
9	BLOOM	ABCNEWS	CURRENT	TWC	CSPAN2
10	TWC	CSPAN	FBN	WCPODT2	TWC
11	CSPAN	CSPAN2	FNC	CSPAN	KCPQDT2
12	CSPAN2	CSPAN3	TWC	CSPAN2	WTHRSCN
13	CSPAN3	FBN	CNN	CSPAN3	CURRENT
14	ABCNEWS	FNC	HLN	CN2	BLOOM
15	CURRENT	TWC	LINKTV	WKLEDT3	FBN
16		CURRENT	NDTV2		CSPAN3
17		WLIWDT3	MHZWV		
18		CTNPUB			
19		WTHRSCN			
	<b>14/15</b>	<b>15/19</b>	<b>12/17</b>	<b>13/15</b>	<b>5/16</b>
	<b>93%</b>	<b>79%</b>	<b>71%</b>	<b>87%</b>	<b>31%</b>

16. The number of news channels carried in system channel lineups with BTV in the Relevant DMAs varies among the Top 14 MVPDs from 9.4 to 19.9 as the following chart details.<sup>8</sup>

<sup>7</sup> The systems were chosen to be representative of each of the distributor’s systems in the DMAs. They are: AT&T, San Francisco DMA, [REDACTED]; Verizon, NY DMA, [REDACTED]; DirecTV, Cincinnati DMA, [REDACTED]; Insight, Cincinnati DMA, [REDACTED]; Comcast, Seattle DMA, [REDACTED]

**TOTAL NEWS CHANNELS CARRIED IN LINEUPS  
WITH BTV IN THE RELEVANT DMAs**  
(Average of all lineups) {{

<u>AT&amp;T</u> ■	<u>Verizon</u> ■	<u>DirecTV</u> ■	<u>Dish</u> ■	<u>Bright House</u> ■	<u>Cablevision</u> ■	
<u>Suddenlink</u> ■	<u>Charter</u> ■	<u>Comcast</u> ■	<u>Insight</u> ■	<u>Time Warner</u> ■	<u>Mediacom</u> ■	<u>Cox</u> ■

}}

17. Looking at **all** of these lineups (a total of 878) reveals the extent to which news neighborhoods are deployed by each MVPD throughout their systems in the Relevant DMAs. A clear and significant difference in practice among the distributors is evident.

18. The two charts below detail the percentage of each MVPD’s channel lineups that have the specified percentages of all of the news channels it carries contained in a group of channels within the maximum range suggested by Bloomberg to be substantially adjacent.<sup>9</sup>

19. The first group of distributors has created and maintains news neighborhoods universally or nearly so. Each of these MVPDs places more than 70% of all of its news channels in a neighborhood in at least 80% of their lineups, suggesting that the minimum percentage standard for a group of news channels to qualify as a news neighborhood might well be at least 70%.

<u>% OF NEWS CHANNELS IN A GROUPING</u>	<u>% OF MVPD’s CHANNEL LINEUPS IN THE RELEVANT DMAs</u>			
<u>At Least:</u>	<u>DIRECTV</u>	<u>VERIZON</u>	<u>AT&amp;T</u>	<u>INSIGHT</u>
<b>60%</b>	100	100	100	100
<b>70%</b>	100	80	100	100

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<sup>8</sup> CableOne, the number 10 cable MSO, does not carry BTV in these DMAs, so it does not appear in the table and analyses that follow.

<sup>9</sup> I have used a proposed standard for the range of channels within which the news channels must be located to qualify as a neighborhood of 125% of the number of news channels in the news neighborhood. This is quite similar to that employed by Bloomberg in its Complaint. Bloomberg’s economist, Gregory S. Crawford, used a minimum of 4 news channels within a maximum of 5 channels, a range that is equal to 125% of the number of news channels within the neighborhood (4 x 125% = 5).

20. By that 70% or more standard, Time Warner Cable, the second largest cable operator, deploys news neighborhoods in a slight majority (53%) of its lineups. Using the lesser 60% threshold, a similar proportion (54%) of TWC’s lineups qualifies. DISH does not reach the 70% threshold in any of its systems; however, 100% of its channel lineups approach the 60% threshold, carrying 58% of all of their news channels in their news grouping.

21. Of the remaining MVPDs, by even the modest neighborhood standard of 60% or more, only Mediacom rises above single digit percentages of qualifying lineups. Importantly, as noted above, at the 60% and 70% thresholds, only 5% and 4%, respectively, of Comcast’s lineups qualify.

<u>% OF NEWS CHANNELS IN A GROUPING</u>	<u>% OF MVPD’s CHANNEL LINEUPS IN THE RELEVANT DMAs</u>						
At Least:	CHARTER	COMCAST	MEDIA-COM	SUDDEN-LINK	BRIGHT-HOUSE	CABLE-VISION	COX
<b>60%</b>	3	5	11	9	0	0	0
<b>70%</b>	2	4	6	5	0	0	0

22. While there is no generally recognized industry definition of a news neighborhood, DirecTV, Verizon, AT&T U-Verse, and Insight have set the industry standard for news channels in a news neighborhood at 70% or more of all news channels in the lineup. These MVPDs have deployed news neighborhoods widely throughout their systems in the Relevant DMAs. Evaluated by that standard, TWC does so in about one-half of its cable systems. In total, these five MVPDs that extensively employ news neighborhooding comprise 32% of all multichannel subscribers in the Relevant DMAs. Quite clearly, the other MVPDs, most notably Comcast, offer news neighborhoods in few, if any, of their systems.

23. In summary, Bloomberg’s proposed four news channels within five channels definition of a news neighborhood does not come close to meeting a common sense standard

of either customer or cable operator utility or the standard set by four other leading multichannel television distributors. Moreover, when evaluated by either standard, the vast majority of the lineups in the Comcast systems in these DMAs do not deploy news neighborhoods.

**III. Comcast's Small Groupings Of News Channels Are The Vestiges Of A Practice Abandoned When The Cable Systems Evolved From Analog To Digital Video Distribution Technology.**

24. During the 1980s and 1990s as most cable systems added the original national news channels (CNN, HLN, CNBC, CSPAN, TWC, MSNBC, FNC) to their lineups, they did so as the networks first launched nationally or as the systems increased channel capacity via upgrades and rebuilds. Of course, cable systems at the time employed only analog technology in delivering channels to customers, so the networks went on in that form and generally were included in the Basic ("B1") or Expanded Basic ("B2") service levels. When digital delivery to the home rolled out in cable systems from the end of the decade of the 1990s into the early 2000s, a common strategy was to cap the spectrum (*i.e.*, bandwidth) used by the B1 and B2 levels (collectively) at the level it stood at the time, and dedicate the balance to the digital purposes of video and broadband Internet access and telephony. Generally that meant that most of the existing analog services would be carried in the cable system's spectrum no higher than the first 550 MHz (channel 78), and depending on system channel capacity, often lower.

25. Therefore, after the late 1990s, most video networks were launched on cable systems in compressed, digital video form as cable operators took advantage of the increase in the number of channels that digital provided. Cable companies launched the networks on new, optional service levels received via a new digital set top box ("STB") provided to those

customers who chose to purchase this service. Digital channel number assignments rose into the hundreds.

26. As a result of this general industry dynamic, whether or not the original analog news networks were positioned on adjacent channels, the quantity and composition of the news channels in the analog spectrum (generally, CNN, HLN, etc.), was then largely locked in and capped more than a decade ago. The next wave of news networks subsequently began rolling out on cable systems, mostly in the digital spectrum, including, but not limited to, BTV, CSPAN 3, Weatherscan, Fox Business News, Current TV, CNBC World, and many broadcast digital multiplex stations that today carry local news, local weather, and public affairs programming. As these news networks were added to a system and the number of news channels on the system's menu grew, any existing analog spectrum news groupings became a smaller and smaller percentage of the news channels carried, withering as it lost any ability it may have once had to serve the purposes of a news "neighborhood" detailed above.

27. We see these original news channels located below channel 78 today throughout the cable industry, often in the "four out of five" news groups cited by Bloomberg. While an academic may calculate the probability of these groups existing widely in Comcast's systems by chance as a number "so infinitesimal that it cannot be calculated with precision by a computer..."<sup>10</sup> there is no mystery about their existence for anyone familiar with the evolution of the cable business.

28. Moreover, because Comcast acquired a preponderance of its cable subscribers (and presumably, the majority of systems) after the launch of digital video, it inherited some of today's news grouping vestiges from the former owners of the systems who created them

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<sup>10</sup> See Compl. ¶ 75; Compl. Ex. F ¶ 53.

many years ago. One such example is the Seattle, WA cable system, which, as noted above, Bloomberg cited as an example of a news neighborhood, consisting of five consecutive news channels as follows: CNN-44, CNN Headline News-45, CNBC-46, MSNBC-47, Fox News-48. As the pre-digital channel lineup of July, 2002, when the system was owned by AT&T (attached as Exhibit E) shows quite plainly, the system carried ALL of these news channels on these same channel numbers at that time. Moreover, as explained above, the system today carries 11 additional news channels, none of which is located anywhere near the alleged news neighborhood.

29. Some MVPDs in the Relevant DMAs have established true news neighborhoods by duplicating in digital form the original analog spectrum news channels and placing those digital duplicates substantially-adjacent to the second wave news networks. We see this in the Insight headends and in nearly all of the 53% of TWC lineups that do reach the 70% or more standard of news channels being located in a news neighborhood discussed above. Notably, each MSO has not disrupted its customers by removing the feeds of the original news channels in the analog spectrum, but rather simulcasts two feeds of each channel. In Insight's case, the original analog spectrum news channels constitute a four out of five news "neighborhood" by Bloomberg's definition. But Insight, presumably concluding that this grouping of news channels did not serve the purposes of a news "neighborhood", incorporated them into a true news "neighborhood" in the digital channels range.

30. Unlike most cable systems, DISH, DirecTV, Verizon, and AT&T U-Verse launched their distribution systems with state-of-the-art digital set top boxes in every customer's home (and in the case of the phone companies, after most of the news networks had launched), giving them the benefit of an abundance of channel space. As a result, they

have not only extensively grouped news channels, but they've also deployed several other extremely large genre-based groups of channels.

**GENRE-BASED GROUPINGS**

<u>CHANNELS IN GROUP/TOTAL GENRE CHANNELS CARRIED</u>				
	<b>DIRECTV</b>	<b>DISH</b>	<b>VERIZON</b>	<b>AT&amp;T</b>
<b>Sports</b>	73/88	41/57	20/38	44/44
<b>Music</b>	6/8	6/6	15/15	14/14
<b>Kids / Teens</b>	14/14	12/13	12/12	14/14
<b>Women</b>		7/10	17/18	14/16
<b>Religious</b>	15/15	9/11	11/11	10/10

**IV. Comcast Distributes BTV To A Greater Proportion Of Its Customers Than The Multichannel Industry Average; Its Channel Assignments For BTV And CNBC Are Consistent With Those Of Its MSO Peers.**

31. In the Relevant DMAs, Comcast carries BTV on a percentage of its headends that is virtually identical to that of the Top 14 MVPDs (averages of 81% and 82%, respectively). Perhaps more importantly, Comcast delivers BTV to a significantly greater percentage of its basic subscribers than the multichannel industry average.

**SUBSCRIBERS AS OF 12/2010 (000)**

	<u>ALL U.S. MVPDs</u>	<u>COMCAST IN THE 26 DMAs</u>
<b>Basic</b>		
<b>BTV</b>		
<b>Penetration</b>		
U.S. Subscribers per SNLKagan, 2011		
Comcast Subscribers per Comcast Corporation		

32. Reflecting the analog to digital video evolution, in the lineups carrying BTV, Comcast distributes BTV on channel numbers above 100, on average, with nearly identical frequency to its cable MSO peers. Comcast also delivers CNBC on channel numbers below 100, on average, with identical frequency to that of its MSO peers.

	<u>Headends that carry BTV on a channel above 100</u>	<u>Headends that carry CNBC on channel 1-100</u>
<b>Total for Top 10 MSOs</b>	99%	99%
<b>Comcast</b>	98%	99%

**V. Realigning Comcast’s Channel Lineups To Accommodate Bloomberg’s Request And The Moves Of The Accompanying Other Independent News Channels Would Have Serious And Ongoing Negative Consequences For Customers, Other Networks, Local And State Governments, and Comcast.**

**A. Harm Done To Customers**

33. According to Bloomberg’s Complaint, in the pertinent DMAs, Comcast currently has 368 headends that carry BTV and have news neighborhoods (news neighborhoods and news channels as defined by Bloomberg) that do not include BTV. If Comcast were required to move BTV’s channel location into these four news channels out of five channel groupings, and if Comcast were then required to move other independent news channels as well, now or in the future, the disruption of subscribers’ long-ago-settled viewing habits would be massive.

34. Since Comcast’s groupings of news channels cited by Bloomberg reside almost entirely in the fully-utilized original analog spectrum, blank channel numbers are not generally available nearby. Therefore, moving BTV in also means moving at least one channel out, doubling the customer disruption. Again, the channel being moved out has likely been on its channel number – and the subscriber has been watching it there – for many years, likely, in most cases, since the 1980s or 1990s. So, the move of the two channels will require the customer to find each once again in the lineup.

35. An additional problem arises in an affected headend that carries BTV in digital form and has not digitized its B1 and B2 channels, carrying them today only in analog. If, as is likely, that lineup does not have an unused channel in the analog spectrum, then

moving BTV into the analog spectrum to be substantially adjacent to the four of five news group would require taking away a B1 or B2 channel from the B1 or B2 only customer.<sup>11</sup> This is because the move of BTV to an analog number requires making room for it by moving an existing channel out to the digital spectrum, which these subscribers cannot receive as they do not have a digital set top device. In addition, all analog TVs on additional outlets without a digital set top device would no longer receive that B1 or B2 channel.

36. If Bloomberg's interpretation of a "news neighborhood" were endorsed by the Commission, this could mean that all independent news channels could be entitled to demand the same treatment, compounding the disruption. Including BTV, in the 602 Comcast lineups in the Relevant DMAs, there are an estimated 1,819 channels carrying an independent news network that are not currently in a news neighborhood in headends with one or more news neighborhoods (per Bloomberg's neighborhood standard). These 1,189 independent news channels are carried on 507 of the 602 lineups, an average of 3.6 such channels per lineup. The customer disruption described above to accommodate Bloomberg's request will necessarily be multiplied by almost four times. If relocating demands from other independent news channels are not made at once, but over time, the result could be a prolonged state of upheaval.

**B. Harm Done To Comcast**

37. Probably the most serious consequences of a move of BTV and the other independent news channels would be felt in the negative reactions of its customers. Regardless of how well Comcast executes a prior notification plan, my experience as a cable operator informs me that many customers will be confused, frustrated, even angry. Not only will they (temporarily) have lost track of one or more of their favorite channels, the paying

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<sup>11</sup> B1 and B2 only customers are those without a premium or other service requiring a digital set top device.

customers will not see any benefit from the disruption. Many calls to customer service will result at a minimum. A cancelled cable subscription may be a likely conclusion for some customers.

38. The pre-move notification program Comcast must undertake would cost a great deal of money. In addition to the time and expense of training its employees for the looming moves and likely customer reactions, coordinating with guide companies and local newspapers, prior written notice of the channel changes (and any changes to service levels such as the potential channel removal from B1 or B2 discussed above) to customers affected and broadcasters impacted would be required pursuant to FCC regulations. Where the moves will result in rate or service changes, prior notice must also be given to local franchising authorities. Where private agreements (*e.g.*, with a homeowner's association for an MDU complex) require, additional letters may be necessary as well.

39. To explain such drastic channel changes, it is likely Comcast would purchase newspaper notices, produce and air TV commercials, run crawls on its channels, post notices on its bulletin board and guide channels, send emails, and print messages on its bills, all of which have a cost to accomplish. In addition, Comcast may well produce, print, and have its billing companies insert print notices in its bills, which typically cost a cable system \$.05 or more per subscriber. In systems where the changes are many, to lessen the harms for all, it is possible that Comcast would also mail a postcard or letter to customers at all-in costs of as much as [REDACTED] per subscriber. Lastly, all print channel cards given to new customers at the time of installation will have to be reprinted for all affected lineups.

40. Some of Comcast's affiliation agreements with cable networks and/or retransmission consent agreements with broadcast stations moved to accommodate Bloomberg may have to be renegotiated, in part. It is not unusual for these agreements to

prohibit a move in any lineup from a service level to one with a lesser number of subscribers. Such agreements may also restrict Comcast's ability to move the network from its current channel number. Likewise, the move of a municipal access channel without permission of a franchising authority may breach a franchise agreement.

**C. Harm Done To Other Channels And Local And State Governments**

41. Any programming channel moved from a more favorable channel position to a less favorable one to accommodate Bloomberg's request may well be disadvantaged by the disruption and resulting lost viewership. This includes cable networks, local and state government channels, as well as broadcast stations.

42. It should also be noted that these negative consequences would not be a one-time-only event. Going forward, due to changes in ownership and the resulting changes in a channel's status as an independent (or not) news channel as well as changes in programming content (news or not news), channels will have to be moved and news neighborhoods will come and go. While the cable programming history is replete with examples of both ownership and programming changes, just a one channel example illustrates the potential programming change issue. Current TV, which today is a news channel (based on its combination of public affairs and news programs), previously programmed mostly user-generated content which would likely not have qualified as public affairs, making it a non-news channel at that time. Prior to that, it was a more classic "news" channel, under prior ownership, called News World International. However, Current TV may well morph again soon into a non-news channel if its 2011 upfront presentation to advertisers touting its soon-to-be positioning as a reality channel is an indication.<sup>12</sup>

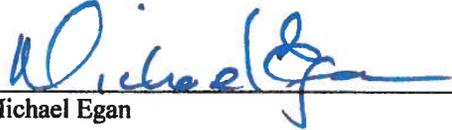
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<sup>12</sup> See Upfronts 2011: Current Positions Itself as 'Real' Reality, [http://www.multichannel.com/article/463711-Upfronts\\_2011\\_Current\\_Positions\\_Itself\\_as\\_Real\\_Reality.php](http://www.multichannel.com/article/463711-Upfronts_2011_Current_Positions_Itself_as_Real_Reality.php).

43. In summary, realigning Comcast's channel lineups to accommodate Bloomberg's request and the moves of the accompanying other independent news channels would have many immediate and ongoing negative consequences for Comcast's customers, other channels, local and state governments, and Comcast.

44. While the opinions presented above are complete based on the information and documents made available to me, I reserve the right to expand, modify, or reduce my above findings and conclusions based on my review of any further disclosures made by any other expert, additional information or documentation provided in this matter, or on testimony and exhibits introduced at any further time.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

  
Michael Egan

Dated: 7-27-11  
Monroe, NY

APPENDIX 1

Michael Egan

Renaissance Media Partners, LLC  
9 Montauk Road, Monroe, NY 10950  
(845) 774-1438 [eganm@renmedia.com](mailto:eganm@renmedia.com)

A senior executive with more than 30 years of successful experience in the cable television industry as well as recognition for leading the development of a new, national-award-winning museum. A record of achievement in expanding the operations of existing companies; founding, developing, and divesting startup ventures; and providing consulting services. Proven abilities to produce effective expert witness services in programming and copyright matters, to deliver strategic analyses of programmer-affiliate agreements and relationships, and to troubleshoot operations. Demonstrated effectiveness in raising capital, forging partnerships, bidding on system acquisitions, negotiating key agreements, writing business and strategic plans, extending business into new areas, and developing staffs. An accomplished executive with strong analytical, communication, content development, marketing, and operational skills; industry knowledge; and professional contacts.

1999 – Today            RENAISSANCE MEDIA PARTNERS, LLC (Management Consulting)  
**Founder & Principal**

Provides strategic research and analysis, business development, and expert witness services to multi-channel tv programmers, distributors, and technology companies. Assists MSOs, cable system operators, programmers, and vendors in troubleshooting or refocusing existing products and operations. Projects include expert witness reports and testimony for **Time Warner Cable** and **Comcast Corp.** in programming-related proceedings as well as for the **NCAA and the professional sports leagues** at the US Copyright Office; programming acquisition analysis and business development for **Comcast Corp.** and **Charter Communications**; retransmission consent work for **Time Warner Cable**; strategic analysis of affiliate agreements for **Rainbow Media**; cable system turn-around and divestiture for **Centennial Puerto Rico Cable TV Corp.**; strategic sales analysis/design for **American Life TV Network**; product and business development for its companies (**Commerce TV & Microsoft TV**); affiliate agreement negotiation, extensive brand research, and programming development for a potential national channel launch of **CelticVision**; strategic analysis for a music licensor; and on-going consulting services for Bethel Woods Center for the Arts and Granite Associates, LP. Served as CEO, Museum Development, Gerry Foundation, responsible for all aspects of the creation of the award-winning **The Museum at Bethel Woods**, including content development and acquisition, media production, exhibit design and construction, staff development, and public opening PR and execution.

1996 – 1999            RENAISSANCE MEDIA HOLDINGS (Cable MSO)  
**Co-Founder, Principal, Executive Vice President**

Founded the company with other members of Cablevision Industries' sr. management team to raise capital to acquire and manage cable tv systems. The group partnered with **Morgan Stanley Capital Partners** and **Time Warner Cable** to purchase 8 cable systems. The properties were subsequently sold to **Charter Communications** in 1999. During its ownership and management, the company met or exceeded all bank projections.

- Co-author of the 7-year business plan for the company.
- A key negotiator in structuring the partnerships among the founders as well as with Morgan Stanley.

- An integral member of the 3-person team that analyzed, prepared projections for, and bid on cable properties.
- Helped to raise over \$100M in equity and over \$200M in debt for the acquisitions.
- Led Renaissance's efforts in programming, pay per view, ad sales, new business development.
- Negotiated the key programming management agreement with Time Warner Cable.
- Authored the company's projections and business plans for digital and data services; co-created the digital programming, packaging, pricing, marketing plans.

1980 – 1996                      CABLEVISION INDUSTRIES (CVI) (Cable MSO)

**Sr. Vice President, Programming and Product Development**

Joined the company as Director of Programming; expanded responsibilities to become SVP of Programming and Product Development and a member of the Sr. Management Team. During that time, CVI grew from 38,000 to 1.3M customers with over \$500M in annual revenues to become the 8<sup>th</sup> largest U.S. cable television company.

- As a member of the Sr. Management Team, participated daily in most aspects of cable operations, corporate policy development, regulatory compliance, budget review and approval, system franchising, acquisitions, rate increase development, and strategic planning.
- Established excellent working relationships with cable and broadcast programmers, negotiated several hundred favorable national, regional, and local affiliation agreements encompassing license fees, marketing support, retransmission consent, exclusivity provisions, etc. Annual license fees totaled in excess of \$110M.
- Managed/Supervised all company activities in local programming, video production, channel lineup development, copyright and must carry compliance.
- Managed/Supervised all field and corporate activities (marketing, programming, budgeting, operations) for the company's \$11M/yr pay per view business. CVI was recognized as an industry leader in pay per view, winning several national marketing awards.
- Managed/Supervised all field and corporate advertising sales efforts (personnel development, budgeting, technology, etc.). Revenues exceeded \$16M/yr.
- Managed the company's introduction of new products, including impulse ppv, digital audio, nvod, as well as its investment in **Sunshine Network, Golf Channel and Food Network.**

**Industry Recognition:**

- Elected a Cable TV Pioneer
- Twice elected to the National Academy of Cable Programming Board of Directors
- Speaker/panelist at numerous CTAM, NCTA, NFLCP conferences
- Winner of CableAce awards and CTAM PPV Case Study
- National Museum Achievement awards from the American Association of Museums and the Themed Entertainment Association

1978-1980                      SATORI PRODUCTIONS, New York  
**Producer/Production Manager**

1975-1977                      HANOVER PARK SCHOOL DISTRICT, East Hanover, NJ  
**High School English and Broadcasting Teacher**

**EDUCATION**

**BS, SUNY Albany, NY**

**MS, S.I. Newhouse School of Public Communications, Syracuse University, NY**

# Attachment A

**Additional Details of the Methodology Used In The Categorization of News Channels And Independent News Channels**

Those channels categorized as news channels were those that met the programming criteria delineated in footnote 292, subsection (iii), of section 122 of the Order's language and were: ". . . focused on public affairs, business, or local news reporting and analysis during the hours from 6:00 am through 4:00 pm in the U.S. Eastern Time Zone."

In those cases in which a channel offered additional genres beyond news, a count of the hours of programming of each genre aired during the pertinent time period was done. If the majority of airtime was news, public affairs, and business, the channel was categorized as a news channel. For example, many broadcast stations carried by the Top 14 MVPDs were determined to transmit the WORLD and/or MHz Worldview networks on their digital multicast over-the-air feeds. Close examinations of the full day broadcast schedules of each of these video networks during the two week period of June 19 through July 2, 2011 revealed that a slight majority of WORLD's airtime comprised news, public affairs, and business programs while a minority consisted of nature, science, human interest, history, and entertainment programs; and that approximately three-quarters of MHz Worldview's airtime was composed of news and public affairs programs while the balance was entertainment programming. Each network, and therefore each broadcast multicast station transmitting one of the networks (determined by researching the web site of each broadcaster), was classified as a news network.

Following the long history of FCC communications and regulations on the subject, especially in the broadcast licensing arena, public affairs programming was

deemed, in general, to be that programming responsive to issues concerning the public welfare. For example, it includes that programming “dealing with local, state, regional, national, or international issues or problems, including, but not limited to, talks, commentaries, discussions, speeches, editorials, political programs, documentaries, mini-documentaries, panels, roundtables and vignettes, and extended coverage of public events or proceedings, such as local council meetings, congressional hearings and the like.”<sup>1</sup> Weather channels were deemed to be news as they fit within these criteria, and weather reports specifically have been referred to as news by the FCC in the past.<sup>2</sup>

Beyond those discussed above, there are several types of video networks that might be argued to be news channels and/or as news channels to be included in the analysis of news groupings as news neighborhoods. I have taken a conservative approach with these. While they were categorized as news channels, HD news channels were not subsequently included for news neighborhood analysis. Obviously, these HD channels are news networks and are carried on virtually all distribution systems in the DMAs. As HD penetration continues to rise, the HD news channels may increasingly be a factor in the news neighborhood calculation. Similarly, non-English language news channels were categorized as news channels, but not included for neighborhood analyses purposes because the language spoken is generally considered more important for MVPD grouping purposes than the genre as evidenced by the channel lineups in the distribution systems

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<sup>1</sup> See *Revision of Programming & Commercialization Policies*, Report and Order, 98 FCC 2d 1076 (1984) (citing FCC 1980 Annual Programming Report, Form #303-A, October 1980).

<sup>2</sup> See *Revision of Programming & Commercialization Policies*.

operated by Cablevision, DirecTV, DISH, AT&T, Verizon, and Comcast among others.

Finally, while I did not include them as such, one might argue that a sports news network such as ESPNNews should be considered a news channel.

Those channels categorized as independent news channels were those news channel's that met the criteria of footnote 292, subsections (i) and (ii), of section 122 of the Order's language and were: "(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". Using the 2011 SNL Kagan data for 2010, the top 15 programming networks were determined to be: ESPN, HBO/Cinemax, TNT, USA Network, Nickelodeon/Nick AT Nite, FOX News Channel, TBS, Showtime/TMC/Flix, Starz/Encore, MTV, CNN/HLN, Disney Channel, ESPN2, FX, and Discovery Channel. The owners of five percent or more of these networks were determined to be: CBS Corporation, Comcast Corporation, General Electric Company, Discovery Communications, Hearst Corporation, Liberty Starz Group, News Corp., The Walt Disney Company, Time Warner Inc., and Viacom. All news networks of which these entities owned five percent or more were identified as not independent with the balance determined to be independent.

# Attachment B

News Channels Carried by Top 14 MVPDs<sup>1</sup>

Callsign	Network Description	Programming Genre	Resolution	Language	Carried by Comcast
AAJTK	AAJ TAK	News	SD	Other	N
ABCNEWS	ABC News Now	News	SD	English	N
ALJZ	ALJZ - Al Jazeera (Arabic)	News	SD	Other	N
ALJZENG	Al Jazeera English	News	SD	English	N
ARABYIA	Al Arabiya (International)	News	SD	Other	N
ARYNEWS	ARY News	News	SD	Other	N
BANDN	Band News	News	SD	Other	N
BAY9	Bay News 9	Local News	AN	English	N
BAY9DT	Bay News 9 DT	Local News	SD	English	N
BAY9ES	Bay 9 News in Espanol	News	SD	Other	N
BBCARAB	BBC Arabic	News	SD	Other	N
BBCWLD	BBC WORLD	News	SD	English	Y
BCAT56	BCAT56	News Public Affairs	SD	English	N
BHMANGO	Brighthouse Manatee Government Access	News Public Affairs	SD	English	N
BLOOM	Bloomberg Business Television	News-Business	SD	English	Y
BLOOMHD	Bloom Business Television HD	News	HD	English	Y
BONTV	Blue Ocean Network	News	SD	English	N
BRONXGA	Bronxville Government Access	News-Public Affairs	AN	English	N
CABLENO	CABLENOTICIAS	News	SD	Spanish	Y
CALCHAN	California Channel	News-Public Affairs	SD	English	Y
CBB	Community Bulletin Board	News	SD	English	Y
CCTVNWS	CCTV News	News	SD	Other	Y
CFLN	Central Florida News 13	News	AN/SD	English	N
CFLNHD	Central Florida News 13 HD	News	HD	English	N
CLTV	Chicagoland Television News	Local News	SD	English	Y
CN100	Comcast 100	News-Public Affairs	SD	English	Y
CN2	Cable News 2	News	AN/SD	English	N
CNBC	CNBC	News-Business	SD	English	Y
CNBCHD	CNBC HD	News-Business	HD	English	Y
CNBCWLD	CNBC World	News-Business	SD	English	Y
CNN	Cable News Network	News	SD	English	Y
CNNE	CNN en Espanol United States	News	SD	Spanish	Y
CNNHD	CNN HD	News	HD	English	Y
CNNI	CNN International	News	SD	English	Y
CNNL	CNN En Espanol Latin America	News	SD	Spanish	Y
CNNLM	CNN En Espanol- Mexico and US	News	SD	Spanish	Y
COXNEWZ	Cox News Zone	News	SD	English	N
CSPAN	CSPAN	News-Public Affairs	SD	English	Y
CSPAN2	CSPAN2	News-Public Affairs	SD	English	Y
CSPAN3	CSPAN3	News-Public Affairs	SD	English	Y
CSPANHD	CSPAN HD	News-Public Affairs	HD	English	Y
CSPN2HD	CSPAN2 HD	News-Public Affairs	HD	English	Y
CSPN3HD	CSPAN3 HD	News-Public Affairs	HD	English	N
CTNPUB	CTN Connecticut Public Affairs	News-Public Affairs	SD	English	Y

<sup>1</sup> This data is derived from Tribune Media Services (TMS) from June 2011. The networks provided in this table represent networks that (according to TMS) are carried by Comcast or by one of the other top 14 MVPDs in the Relevant DMAs. Certain information may not correspond in all instances to Comcast's internal data. The highlighted networks reflect those news networks that were not identified as news network by Bloomberg. See Compl. Ex. F (Declaration of Gregory S. Crawford), App. B.

**FOR PUBLIC INSPECTION**

<b>Callsign</b>	<b>Network Description</b>	<b>Programming Genre</b>	<b>Resolution</b>	<b>Language</b>	<b>Carried by Comcast</b>
CURRENT	Current TV	News-Public Affairs	SD	English	Y
CVCGOVT	Cablevision Government Access	News	AN/SD	English	N
CVCSP2	Cablevision CVCSP2	News-Public Affairs	AN/SD	English	N
DWR	Doppler Weather Radar	News-Weather	SD	English	Y
ETFINWS	ET Financial News	News-Business	SD	Other	N
ETNEW	ETTV News	News	SD	Other	Y
EURONEW	Euro News	News	SD	English	N
EXPNW	Express News	News	SD	Other	N
FBN	Fox Business	News-Business	SD	English	Y
FBNHD	Fox Business HD	News-Business	HD	English	Y
FLACHAN	Florida Channel	News-Public Affairs	AN/SD	English	N
FNC	Fox News Channel	News	SD	English	Y
FNCHD	Fox News Channel HD	News	HD	English	Y
FRNC24	France 24	News	SD	English	N
FSTV	Free Speech TV	News-Public Affairs	SD	English	N
GEONWS	Geo News	News	SD	Other	N
GLOVIS	Globovision	News	SD	Other	Y
GOAC001	Government Access - GOAC001	News-Public Affairs-Access	SD	English	N
GOAC002	Government Access - GOAC002	News-Public Affairs-Access	SD	English	Y
GOAC003	Government Access - GOAC003	News-Public Affairs-Access	SD	English	Y
GOAC004	Government Access - GOAC004	News-Public Affairs-Access	SD	English	Y
GOAC005	Government Access - GOAC005	News-Public Affairs-Access	SD	English	Y
GOAC006	Government Access - GOAC006	News-Public Affairs-Access	SD	English	Y
GOAC007	Government Access - GOAC007	News-Public Affairs-Access	SD	English	Y
GOAC008	Government Access - GOAC008	News-Public Affairs-Access	SD	English	Y
GOAC009	Government Access - GOAC009	News-Public Affairs-Access	SD	English	Y
GOAC010	Government Access - GOAC010	News-Public Affairs-Access	SD	English	Y
GOAC011	Government Access - GOAC011	News-Public Affairs-Access	SD	English	Y
GOAC012	Government Access - GOAC012	News-Public Affairs-Access	SD	English	Y
GOAC013	Government Access - GOAC013	News-Public Affairs-Access	SD	English	Y
GOAC014	Government Access - GOAC014	News-Public Affairs-Access	SD	English	Y
GOAC015	Government Access - GOAC015	News-Public Affairs-Access	SD	English	Y
GOAC016	Government Access - GOAC016	News-Public Affairs-Access	SD	English	Y
GOAC017	Government Access - GOAC017	News-Public Affairs-Access	SD	English	Y
GOAC018	Government Access - GOAC018	News-Public Affairs-Access	SD	English	Y
GOAC019	Government Access - GOAC019	News-Public Affairs-Access	SD	English	Y
GOAC020	Government Access - GOAC020	News-Public Affairs-Access	SD	English	Y
GOAC021	Government Access - GOAC021	News-Public Affairs-Access	SD	English	Y
GOAC022	Government Access - GOAC022	News-Public Affairs-Access	SD	English	Y
GOAC023	Government Access - GOAC023	News-Public Affairs-Access	SD	English	Y
GOAC024	Government Access - GOAC024	News-Public Affairs-Access	SD	English	Y
GOAC025	Government Access - GOAC025	News-Public Affairs-Access	SD	English	Y
GOAC026	Government Access - GOAC026	News-Public Affairs-Access	SD	English	Y
GOAC027	Government Access - GOAC027	News-Public Affairs-Access	SD	English	Y
GOAC028	Government Access - GOAC028	News-Public Affairs-Access	SD	English	Y
GOAC029	Government Access - GOAC029	News-Public Affairs-Access	SD	English	Y
GOAC030	Government Access - GOAC030	News-Public Affairs-Access	SD	English	Y
GOAC040	Government Access - GOAC040	News-Public Affairs-Access	SD	English	N
GOAC042	Government Access - GOAC042	News-Public Affairs-Access	SD	English	Y
GOAC043	Government Access - GOAC043	News-Public Affairs-Access	SD	English	Y
GOAC046	Government Access - GOAC046	News-Public Affairs-Access	SD	English	Y
GOAC049	Government Access - GOAC049	News-Public Affairs-Access	SD	English	Y

**FOR PUBLIC INSPECTION**

<b>Callsign</b>	<b>Network Description</b>	<b>Programming Genre</b>	<b>Resolution</b>	<b>Language</b>	<b>Carried by Comcast</b>
GOAC052	Government Access - GOAC052	News-Public Affairs-Access	SD	English	Y
GOAC055	Government Access - GOAC055	News-Public Affairs-Access	SD	English	Y
GOAC058	Government Access - GOAC058	News-Public Affairs-Access	SD	English	Y
GOAC060	Government Access - GOAC060	News-Public Affairs-Access	SD	English	Y
GOAC063	Government Access - GOAC063	News-Public Affairs-Access	SD	English	Y
GOAC064	Government Access - GOAC064	News-Public Affairs-Access	SD	English	Y
GOAC067	Government Access - GOAC067	News-Public Affairs-Access	SD	English	Y
GOAC070	Government Access - GOAC070	News-Public Affairs-Access	SD	English	Y
GOAC071	Government Access - GOAC071	News-Public Affairs-Access	SD	English	Y
GOAC074	Government Access - GOAC074	News-Public Affairs-Access	SD	English	Y
GOAC075	Government Access - GOAC075	News-Public Affairs-Access	SD	English	Y
GOAC076	Government Access - GOAC076	News-Public Affairs-Access	SD	English	Y
GOAC077	Government Access - GOAC077	News-Public Affairs-Access	SD	English	Y
GOAC078	Government Access - GOAC078	News-Public Affairs-Access	SD	English	Y
GOAC080	Government Access - GOAC080	News-Public Affairs-Access	SD	English	N
GOAC092	Government Access - GOAC092	News-Public Affairs-Access	SD	English	Y
GOAC095	Government Access - GOAC095	News-Public Affairs-Access	SD	English	Y
GOAC096	Government Access - GOAC096	News-Public Affairs-Access	SD	English	Y
GOAC097	Government Access - GOAC097	News-Public Affairs-Access	SD	English	Y
GOAC098	Government Access - GOAC098	News-Public Affairs-Access	SD	English	Y
GOAC099	Government Access - GOAC099	News-Public Affairs-Access	SD	English	Y
GOAC100	Government Access - GOAC100	News-Public Affairs-Access	SD	English	Y
GOAC198	Government Access - GOAC198	News-Public Affairs-Access	SD	English	N
GOAC199	Government Access - GOAC199	News-Public Affairs-Access	SD	English	N
GOAC389	Government Access - GOAC389	News-Public Affairs-Access	SD	English	Y
GOAC615	Government Access - GOAC615	News-Public Affairs-Access	SD	English	N
GOAC622	Government Access - GOAC622	News-Public Affairs-Access	SD	English	N
GOAC915	Government Access - GOAC915	News-Public Affairs-Access	SD	English	Y
GOAC965	Government Access - GOAC965	News-Public Affairs-Access	SD	English	Y
GOAC993	Government Access - GOAC993	News-Public Affairs-Access	SD	English	N
HHSN	Health and Human Services Network	News-Public Affairs	SD	English	N
HLN	HLN (Formerly Headline News)	News	SD	English	Y
HLNHD	HLN HD	News	HD	English	Y
HT	Headlines Today (DISH)	News	SD	English	N
HTV22	Hillsborough County CH 22	News-Public Affairs	AN/SD	English	N
ICN6	Insight Communications - ICN 6	News	AN/SD	English	N
KAREDT2	KAREDT2 (KARE-DT2)	News-Weather	SD	English	Y
KAWBDT6	KAWBDT6 (KAWB-DT6)	News-Public Affairs	SD	English	N
KBDIDT3	KBDIDT3 (KBDI-DT3)	News-Public Affairs	SD	English	Y
KBTCDT2	KBTCDT2 (KBTC-DT2)	News-Public Affairs	SD	English	Y
KCPQDT2	KCPQDT2 (KCPQ-DT2)	News-Weather	SD	English	Y
KCRTCAB	KCRT CABLE 49	News-Public Affairs	SD	English	Y
KGWDT2	KGWDT2 (KGW-DT2)	Local News	SD	English	Y
KHNEDT2	KHNEDT2 (KHNE-DT2)	News-Public Affairs	SD	English	N
KHOUDT2	KHOUDT2 (KHOU-DT2)	Local News	SD	English	Y
KHQDT2	KHQDT2 (KHQ-DT2)	News-Weather	SD	English	Y
KMIZDT2	KMIZDT2 (KMIZ-DT2)	News-Weather	SD	English	N
KMOSDT3	KMOSDT3 (KMOS-DT3)	News-Public Affairs	SD	English	N
KNN	Korean News Network	News	SD	Other	N
KQEDDT3	KQEDDT3 KQED World (KQED-DT3)	News-Public Affairs	SD	English	Y
KSHBDT2	KSHBDT2 (KSHB-DT2)	News-Weather	SD	English	Y
KSLDT3	KSLDT3 (KSL-DT3)	News-Weather	SD	English	Y

**FOR PUBLIC INSPECTION**

<b>Callsign</b>	<b>Network Description</b>	<b>Programming Genre</b>	<b>Resolution</b>	<b>Language</b>	<b>Carried by Comcast</b>
KSMQDT2	KSMQDT2 (KSMQ-DT2)	News-Public Affairs	SD	English	N
KSMQDT4	KSMQDT4 (KSMQ-DT4)	News-Public Affairs	SD	English	N
KSTPDT2	KSTPDT2 (KSPT-DT2)	Local News	SD	English	Y
KTCADT2	KTCADT2 (KTCA-DT2)	News-Public Affairs	SD	English	Y
KTCADT4	KTCADT4 (KTCA-DT4)	News-Weather	SD	English	Y
KTCIDT2	KTCIDT2 (KTCI-DT)	News-Public Affairs	SD	English	N
KTVNDT2	KTVNDT2 (KTVN-DT2)	News-Weather	SD	English	N
KUEDDT2	KUEDDT2 (KUED-DT2)	News-Public Affairs	SD	English	Y
KUENDT2	KUENDT2 (KUEN-DT2)	News-Public Affairs	SD	English	Y
KUSADT2	KUSADT2 (KUSA-DT2)	News-Weather	SD	English	Y
KXTVDT2	KXTVDT2 (KXTV-DT2)	News-Weather	SD	English	Y
LAT	Latinoamerica Television	News	SD	Other	N
LINKTV	Link TV	News	SD	English	Y
LTVEG	Cablevision GOVT (EGTV)	News-Public Affairs	SD	English	N
LVC	Lynbrook Village Channel	News-Public Affairs	SD	English	N
LWEA	Local Weather	News-Weather	SD	English	Y
MHZWV	MHz Worldview National Channel	News-Public Affairs	SD	English	N
MNBCHD	MSNBC HD	News	HD	English	Y
MSNBC	MSNBC	News	SD	English	Y
MUNAC	Municipal Access	News-Public Access	SD	English	Y
MUNIC	City of Houston-The Municipal Channel	News-Public Affairs	SD	English	Y
MYGOVT	My Government (Cablevision)	News-Public Affairs	SD	English	N
N12	News 12 Generic	Local News	SD	English	N
N12BX	News 12 Bronx	Local News	SD	English	N
N12BXHD	News 12 Bronx HD	Local News	HD	English	N
N12CT	News 12 Connecticut	Local News	SD	English	N
N12CTHD	News 12 Connecticut HD	Local News	HD	English	N
N12HD	News 12 Generic HD	Local News	HD	English	N
N12HV	News 12 Hudson Valley	Local News	SD	English	N
N12HVHD	News 12 Hudson Valley HD	Local News	HD	English	N
N12I	News 12 Interactive	Local News	SD	English	N
N12KN	News 12 Brooklyn	Local News	SD	English	N
N12KNHD	News 12 Brooklyn HD	Local News	HD	English	N
N12LI	News 12 Long Island	Local News	SD	English	N
N12LIHD	News 12 Long Island HD	Local News	HD	English	N
N12NJ	News 12 New Jersey	Local News	SD	English	Y
N12NJHD	News 12 New Jersey HD	Local News	HD	English	N
N12TW	News 12 Traffic and Weather	News-Traffic/Weather	SD	English	Y
N12WC	News 12 Westchester	Local News	SD	English	N
N12WCHD	News 12 Westchester HD	Local News	HD	English	N
NBCPLUS	NBC Plus	News-Weather	SD	English	Y
NC5	News Channel 5	Local News	SD	English	Y
NDTV2	NDTV 24/7	News	SD	English	N
NECN	New England Cable News	Local News	SD	English	Y
NECNHD	New England Cable News HD	Local News	HD	English	Y
NEWS	Local News	Local News	SD	English	Y
NEWS13	13 News En Espanol	Local News	SD	Other	N
NEWSMIX	DIRECTV NEWS MIX	News	SD	English	N
NHKWRLD	NHK World TV	News	SD	Other	N
NTVH	NTV Hayat	News	SD	Other	N
NWCN	Northwest Cable News	Local News	SD	English	Y
NWS14	News 14 Carolina (NWS14)	Local News	SD	English	N

**FOR PUBLIC INSPECTION**

<u>Callsign</u>	<u>Network Description</u>	<u>Programming Genre</u>	<u>Resolution</u>	<u>Language</u>	<u>Carried by Comcast</u>
NWSKMGH	Newschannel 207 (KMGH News)	Local News	SD	English	Y
NY1	New York 1 News	Local News	AN/SD	English	N
NY1HD	New York 1 News HD	Local News	HD	English	N
NY1NOT	NY1 Noticias for Time Warner	News	SD	Other	N
NY1RR	NY1 Traffic Channel	News-Traffic	SD	English	N
NYCTV72	NYCTV Drive	News-Traffic	SD	English	N
NYCTV74	NYCTV Government	News-Public Affairs	SD	English	N
NYCTV93	NYCTV 93	News-Traffic	SD	English	N
NYSLC	New York State Legislative Channel	News-Public Affairs	SD	English	Y
ONN	Ohio News Network	Local News	SD	English	Y
PARSTV	Pars TV	News	SD	Other	N
PCCTV	Pinellas County Government	News-Public Affairs	SD	English	N
PCN	Pennsylvania Cable Network	News-Public Affairs	SD	English	Y
PCNC	Pittsburgh Cable News Channel	Local News	SD	English	Y
PEG009	Public, Educational, Government PEG009	News - Public Affiars	SD	English	Y
PEG010	Public, Educational, Government PEG010	News - Public Affiars	SD	English	Y
PEG014	Public, Educational, Government PEG014	News - Public Affiars	SD	English	Y
PEG020	Public, Educational, Government PEG020	News - Public Affiars	SD	English	Y
PEG026	Public, Educational, Government PEG026	News - Public Affiars	SD	English	Y
PEG027	Public, Educational, Government PEG027	News - Public Affiars	SD	English	Y
PEG028	Public, Educational, Government PEG028	News - Public Affiars	SD	English	Y
PEG030	Public, Educational, Government PEG030	News - Public Affiars	SD	English	Y
PEG065	Public, Educational, Government PEG065	News - Public Affiars	SD	English	Y
PHNIN	Phoenix Info News	News	SD	Other	Y
RFI	RFI Radio France Internationale	News	SD	Other	N
RTTV	Russia Today	News	SD	English	N
SCOLA	Scola/News of All Nations	News	SD	Other	Y
SCOLA3	SCOLA3 (China Channel)	News	SD	Other	Y
SNN6	SNN News 6	Local News	SD	English	Y
TANTRF	Tango Traffic	News-Traffic/Weather	SD	English	Y
TIMES	Times Now	News	SD	English	N
TV21	Baltimore City Channel	News-Public Affairs	SD	English	Y
TV9KN	TV9 Kannada	News	SD	Other	N
TV9TE	TV9 Telugu	News	SD	Other	N
TVBE	TVBE	News	SD	Other	N
TVBS	TVBS	News	SD	Other	N
TVCNOT	TVCABLE 26 NOTICIAS	News	SD	Other	Y
TVPI	TVP Info	News	SD	Other	Y
TVW	TV WASHINGTON	News-Public Affairs	SD	English	Y
TWC	The Weather Channel	News-Weather	SD	English	Y
TWCHD	The Weather Channel HD	News-Weather	HD	English	Y
TWN	Bright House Networks Travel Weather Now	News-Weather	SD	English	N
TXCN	Texas Cable News	Local News	SD	English	Y
VA16	Fairfax County Government	News-Public Affairs	SD	English	Y
VSIONTV	Orange County Vision TV	News-Public Affairs	SD	English	N
WALVCA	SkyTrak Weather Network	News-Weather	SD	English	N
WBBJDT3	WBBJDT3 (WBBJ-DT3)	News-Weather	SD	English	N
WBCCDT4	WBCCDT4 (WBCC-DT4)	News-Public Affairs	SD	English	Y
WCPODT2	WCPODT2 (WCPO-DT2)	News-Weather	SD	English	N
WCVNDT3	WCVNDT3 (WCVN-DT3)	News-Public Affairs	SD	English	N
WDSCDT2	WDSCDT2 (WDSC-DT2)	News-Public Affairs	SD	English	Y
WDSCDT3	WDSCDT3 (WDSC-DT3)	News-Public Affairs	SD	English	Y

**FOR PUBLIC INSPECTION**

<b>Callsign</b>	<b>Network Description</b>	<b>Programming Genre</b>	<b>Resolution</b>	<b>Language</b>	<b>Carried by Comcast</b>
WDTVDT2	WDTVDT2 (WDTV-DT2)	News-Weather	SD	English	Y
WEST12	News 12 Westchester (WEST12)	News	SD	English	Y
WFMZDT2	WFMZDT2 (WFMZ-DT2)	News-Weather	SD	English	Y
WFSBDT3	WFSBDT3 (WFSB-DT3)	Local News	SD	English	Y
WFTSDT2	WFTSDT2 (WFTS-DT2)	News-Weather	SD	English	N
WFTVDT2	WFTVDT2 (WFTV-DT2)	News-Weather	SD	English	Y
WGBXDT2	WGBXDT2 (WGBX-DT2)	News-Public Affairs	SD	English	Y
WGBYDT2	WGBYDT2 (WGBY-DT2)	News-Public Affairs	SD	English	Y
WGTVDT3	WGTVDT3 (WGTV-DT3)	News-Public Affairs	SD	English	Y
WHIODT2	WHIODT2 (WHIO-DT2)	News-Weather	SD	English	N
WHTJDT3	WHTJDT3 (WHTJ-DT3)	News-Public Affairs	SD	English	Y
WHTMDT3	WHTMDT3 (WHTM-DT3)	News-Weather	SD	English	Y
WHYYDT3	WHYYDT3 (WHYY-DT3)	News-Public Affairs	SD	English	Y
WIPBDT3	WIPBDT3 (WIPB-DT3)	News-Weather	SD	English	Y
WISEYE	Wisconsin Eye	News-Public Affairs	SD	English	N
WISHDT2	WISHDT2 (WISH-DT2)	News-Weather	SD	English	Y
WISHDT3	WISHDT3 (WISH-DT3)	News-Weather	SD	English	Y
WJLADT2	WJLADT2 (WJLA-DT2)	News-Weather	SD	English	Y
WKGBDT3	WKGBDT3 (WKGB-DT3)	News-Public Affairs	SD	English	Y
WKLEDT3	WKLEDT3 (WKLE-DT3) (Ket3)	News-Public Affairs	SD	English	N
WKRNDT2	WKRNDT2 (WKRN-DT2)	News-Weather	SD	English	Y
WKSULD5	WKSULD5 (WKSU-LD5)	News-Weather	SD	English	N
WKYUDT3	WKYUDT3 (WKYU-DT3)	News-Weather	SD	English	Y
WLIWDT3	WLIWDT3 (WLIW-DT3)	News-Public Affairs	SD	English	Y
WLJTD2	WLJTD2 (WLJT-DT2)	News-Public Affairs	SD	English	N
WMARDT3	WMARDT3 (WMAR-DT3)	News-Weather	SD	English	Y
WMEADT3	WMEADT3 (WMEA-DT3)	News-Public Affairs	SD	English	Y
WNC8	News Channel 8	Local News	SD	English	Y
WNCNDT3	WNCNDT3 (WNCN-DT3)	News-Weather	SD	English	Y
WNEODT2	WNEODT2 (WNEO-DT2)	News-Public Affairs	SD	English	Y
WNEODT3	WNEODT3 (WNEO-DT3)	News-Public Affairs	SD	English	Y
WNVC	WNVC (MHz)	News-Public Affairs	SD	Other	Y
WNVCDT	WNVCDT (WNVC-DT)	News-Public Affairs	SD	Other	Y
WNVCDT2	WNVCDT2 (WNVC-DT2)	News-Public Affairs-Access	SD	English	Y
WNVCDT4	WNVCDT4 (WNVC-DT4)	News	SD	English	Y
WNVCDT5	WNVCDT5 (WNVC-DT5)	News	SD	English	Y
WNVTV	WNVTV (MHz2)	News	SD	Other	N
WNVVDT	WNVVDT (WNVV-DT)	News-Public Affairs	SD	Other	Y
WNVVDT2	WNVVDT2 (WNVV-DT2)	News	SD	Other	Y
WNVVDT4	WNVVDT4 (WNVV-DT4)	News	SD	English	Y
WNVVDT5	WNVVDT5 (WNVV-DT5)	News	SD	English	Y
WNVVDT6	WNVVDT6 (WNVV-DT6)	News	SD	English	Y
WNVVDT7	WNVVDT7 (WNVV-DT7)	News	SD	English	Y
WNVVDT8	WNVVDT8 (WNVV-DT8)	News	SD	Spanish	Y
WNYEDT2	WNYEDT2 (WNYE-DT2)	Local News	SD	English	Y
WORLD	PBS World	News-Public Affairs	SD	English	N
WOSUDT2	WOSUDT2 (WOSU-DT2)	News-Public Affairs	SD	English	N
WPBTD2	WPBTD2 (WPBT-DT2)	News-Public Affairs	SD	English	Y
WPHLDT4	WPHLDT4 (WPHL-DT4)	News-Traffic/Weather	SD	English	Y
WPMTDT3	WPMTDT3 (WPMT-DT3)	Local News	SD	English	Y
WPSUDT3	WPSUDT3 (WPSU-DT3)	News-Public Affairs	SD	English	Y
WPTDDT4	WPTDDT4 (WPTD-DT4)	News-Public Affairs	SD	English	N

**FOR PUBLIC INSPECTION**

<b>Callsign</b>	<b>Network Description</b>	<b>Programming Genre</b>	<b>Resolution</b>	<b>Language</b>	<b>Carried by Comcast</b>
WPTODT4	WPTODT4 (WPTO-DT4)	News-Public Affairs	SD	English	N
WPTVDT2	WPTVDT2 (WPTV-DT2)	News-Weather	SD	English	Y
WRTVDT2	WRTVDT2 (WRTV-DT2)	Local News	SD	English	Y
WTHRDT2	WTHRDT2 (WTHR-DT2)	News-Weather	SD	English	Y
WTHRSCN	WeatherScan Local Network	News-Weather	SD	English	Y
WTIUDT2	WTIUDT2 (WTIU-DT2)	News-Public Affairs	SD	English	Y
WTSPDT2	WTSPDT2 (WTSP-DT2)	News-Weather	SD	English	Y
WTVFDT2	WTVFDT2 (WTVF-DT2)	News-Public Affairs	SD	English	Y
WTVJDT2	WTVJDT2 (WTVJ-DT2)	News-Weather	SD	English	Y
WUFTDT2	WUFTDT2 (WUFT-DT2)	News-Public Affairs	SD	English	Y
WVITDT2	WVITDT2 (WVIT-DT2)	News-Weather	SD	English	Y
WVTADT4	WVTADT4 (WVTA-DT4)	News-Public Affairs	SD	English	Y
YNNCNY	Your News Now Central NY	Local News	SD	English	N
YNNCNYH	Your News Now Central NY HD	Local News	HD	English	N
YNNHV	Your News Now Hudson Valley	Local News	SD	English	N
YNNHVHD	Your News Now Hudson Valley HD	Local News	HD	English	N
YNNST	Your News Now Southern Tier	Local News	SD	English	N

# Attachment C

Independent News Channels Carried by Comcast<sup>1</sup>

Callsign	Network Description	Programming Genre	Resolution	Language
BBCWLD	BBC WORLD	News	SD	English
BLOOM	Bloomberg Business Television	News-Business	SD	English
CALCHAN	California Channel	News-Public Affairs	SD	English
CBB	Community Bulletin Board	News	SD	English
CLTV	Chicagoland Television News	Local News	SD	English
CSPAN	CSPAN	News-Public Affairs	SD	English
CSPAN2	CSPAN2	News-Public Affairs	SD	English
CSPAN3	CSPAN3	News-Public Affairs	SD	English
CTNPUB	CTN Connecticut Public Affairs	News-Public Affairs	SD	English
DWR	Doppler Weather Radar	News-Weather	SD	English
GOAC002	Government Access - GOAC002	News-Public Affairs-Access	SD	English
GOAC003	Government Access - GOAC003	News-Public Affairs-Access	SD	English
GOAC004	Government Access - GOAC004	News-Public Affairs-Access	SD	English
GOAC005	Government Access - GOAC005	News-Public Affairs-Access	SD	English
GOAC006	Government Access - GOAC006	News-Public Affairs-Access	SD	English
GOAC007	Government Access - GOAC007	News-Public Affairs-Access	SD	English
GOAC008	Government Access - GOAC008	News-Public Affairs-Access	SD	English
GOAC009	Government Access - GOAC009	News-Public Affairs-Access	SD	English
GOAC010	Government Access - GOAC010	News-Public Affairs-Access	SD	English
GOAC011	Government Access - GOAC011	News-Public Affairs-Access	SD	English
GOAC012	Government Access - GOAC012	News-Public Affairs-Access	SD	English
GOAC013	Government Access - GOAC013	News-Public Affairs-Access	SD	English
GOAC014	Government Access - GOAC014	News-Public Affairs-Access	SD	English
GOAC015	Government Access - GOAC015	News-Public Affairs-Access	SD	English
GOAC016	Government Access - GOAC016	News-Public Affairs-Access	SD	English
GOAC017	Government Access - GOAC017	News-Public Affairs-Access	SD	English
GOAC018	Government Access - GOAC018	News-Public Affairs-Access	SD	English
GOAC019	Government Access - GOAC019	News-Public Affairs-Access	SD	English
GOAC020	Government Access - GOAC020	News-Public Affairs-Access	SD	English
GOAC021	Government Access - GOAC021	News-Public Affairs-Access	SD	English
GOAC022	Government Access - GOAC022	News-Public Affairs-Access	SD	English
GOAC023	Government Access - GOAC023	News-Public Affairs-Access	SD	English
GOAC024	Government Access - GOAC024	News-Public Affairs-Access	SD	English
GOAC025	Government Access - GOAC025	News-Public Affairs-Access	SD	English
GOAC026	Government Access - GOAC026	News-Public Affairs-Access	SD	English
GOAC027	Government Access - GOAC027	News-Public Affairs-Access	SD	English
GOAC028	Government Access - GOAC028	News-Public Affairs-Access	SD	English
GOAC029	Government Access - GOAC029	News-Public Affairs-Access	SD	English
GOAC030	Government Access - GOAC030	News-Public Affairs-Access	SD	English
GOAC042	Government Access - GOAC042	News-Public Affairs-Access	SD	English
GOAC043	Government Access - GOAC043	News-Public Affairs-Access	SD	English
GOAC046	Government Access - GOAC046	News-Public Affairs-Access	SD	English
GOAC049	Government Access - GOAC049	News-Public Affairs-Access	SD	English
GOAC052	Government Access - GOAC052	News-Public Affairs-Access	SD	English
GOAC055	Government Access - GOAC055	News-Public Affairs-Access	SD	English

<sup>1</sup> This data is derived from Tribune Media Services (TMS) from June 2011. The networks provided in this table represent networks that (according to TMS) are carried by Comcast in the Relevant DMAs. Certain information may not correspond in all instances to Comcast's internal data.

**FOR PUBLIC INSPECTION**

<b>Callsign</b>	<b>Network Description</b>	<b>Programming Genre</b>	<b>Resolution</b>	<b>Language</b>
GOAC058	Government Access - GOAC058	News-Public Affairs-Access	SD	English
GOAC060	Government Access - GOAC060	News-Public Affairs-Access	SD	English
GOAC063	Government Access - GOAC063	News-Public Affairs-Access	SD	English
GOAC064	Government Access - GOAC064	News-Public Affairs-Access	SD	English
GOAC067	Government Access - GOAC067	News-Public Affairs-Access	SD	English
GOAC070	Government Access - GOAC070	News-Public Affairs-Access	SD	English
GOAC071	Government Access - GOAC071	News-Public Affairs-Access	SD	English
GOAC074	Government Access - GOAC074	News-Public Affairs-Access	SD	English
GOAC075	Government Access - GOAC075	News-Public Affairs-Access	SD	English
GOAC076	Government Access - GOAC076	News-Public Affairs-Access	SD	English
GOAC077	Government Access - GOAC077	News-Public Affairs-Access	SD	English
GOAC078	Government Access - GOAC078	News-Public Affairs-Access	SD	English
GOAC092	Government Access - GOAC092	News-Public Affairs-Access	SD	English
GOAC095	Government Access - GOAC095	News-Public Affairs-Access	SD	English
GOAC096	Government Access - GOAC096	News-Public Affairs-Access	SD	English
GOAC097	Government Access - GOAC097	News-Public Affairs-Access	SD	English
GOAC098	Government Access - GOAC098	News-Public Affairs-Access	SD	English
GOAC099	Government Access - GOAC099	News-Public Affairs-Access	SD	English
GOAC100	Government Access - GOAC100	News-Public Affairs-Access	SD	English
GOAC389	Government Access - GOAC389	News-Public Affairs-Access	SD	English
GOAC915	Government Access - GOAC915	News-Public Affairs-Access	SD	English
GOAC965	Government Access - GOAC965	News-Public Affairs-Access	SD	English
KAREDT2	KAREDT2 (KARE-DT2)	News-Weather	SD	English
KBDIDT3	KBDIDT3 (KBDI-DT3)	News-Public Affairs	SD	English
KBTCDT2	KBTCDT2 (KBTC-DT2)	News-Public Affairs	SD	English
KCPQDT2	KCPQDT2 (KCPQ-DT2)	News-Weather	SD	English
KCRTCAB	KCRT CABLE 49	News-Public Affairs	SD	English
KGWDT2	KGWDT2 (KGW-DT2)	Local News	SD	English
KHOUDT2	KHOUDT2 (KHOU-DT2)	Local News	SD	English
KHQDT2	KHQDT2 (KHQ-DT2)	News-Weather	SD	English
KQEDDT3	KQEDDT3 KQED World (KQED-DT3)	News-Public Affairs	SD	English
KSHBDT2	KSHBDT2 (KSHB-DT2)	News-Weather	SD	English
KSLDT3	KSLDT3 (KSL-DT3)	News-Weather	SD	English
KSTPDT2	KSTPDT2 (KSPT-DT2)	Local News	SD	English
KTCADT2	KTCADT2 (KTCA-DT2)	News-Public Affairs	SD	English
KTCADT4	KTCADT4 (KTCA-DT4)	News-Weather	SD	English
KUEDDT2	KUEDDT2 (KUED-DT2)	News-Public Affairs	SD	English
KUENDT2	KUENDT2 (KUEN-DT2)	News-Public Affairs	SD	English
KUSADT2	KUSADT2 (KUSA-DT2)	News-Weather	SD	English
KXTVDT2	KXTVDT2 (KXTV-DT2)	News-Weather	SD	English
LINKTV	Link TV	News	SD	English
LWEA	Local Weather	News-Weather	SD	English
MUNAC	Municipal Access	News-Public Access	SD	English
MUNIC	City of Houston-The Municipal Channel	News-Public Affairs	SD	English
N12NJ	News 12 New Jersey	Local News	SD	English
N12TW	News 12 Traffic and Weather	News-Traffic/Weather	SD	English
NC5	News Channel 5	Local News	SD	English
NEWS	Local News	Local News	SD	English
NWCN	Northwest Cable News	Local News	SD	English
NWSKMGH	Newschannel 207 (KMGH News)	Local News	SD	English
NYSLC	New York State Legislative Channel	News-Public Affairs	SD	English
ONN	Ohio News Network	Local News	SD	English
PCN	Pennsylvania Cable Network	News-Public Affairs	SD	English

**FOR PUBLIC INSPECTION**

<b>Callsign</b>	<b>Network Description</b>	<b>Programming Genre</b>	<b>Resolution</b>	<b>Language</b>
PEG009	Public, Educational, Government PEG009	News - Public Affiars	SD	English
PEG010	Public, Educational, Government PEG010	News - Public Affiars	SD	English
PEG014	Public, Educational, Government PEG014	News - Public Affiars	SD	English
PEG020	Public, Educational, Government PEG020	News - Public Affiars	SD	English
PEG026	Public, Educational, Government PEG026	News - Public Affiars	SD	English
PEG027	Public, Educational, Government PEG027	News - Public Affiars	SD	English
PEG028	Public, Educational, Government PEG028	News - Public Affiars	SD	English
PEG030	Public, Educational, Government PEG030	News - Public Affiars	SD	English
PEG065	Public, Educational, Government PEG065	News - Public Affiars	SD	English
SNN6	SNN News 6	Local News	SD	English
TANTRF	Tango Traffic	News-Traffic/Weather	SD	English
TV21	Baltimore City Channel	News-Public Affairs	SD	English
TVW	TV WASHINGTON	News-Public Affairs	SD	English
TXCN	Texas Cable News	Local News	SD	English
VA16	Fairfax County Government	News-Public Affairs	SD	English
WBCCDT4	WBCCDT4 (WBCC-DT4)	News-Public Affairs	SD	English
WDSCDT2	WDSCDT2 (WDSC-DT2)	News-Public Affairs	SD	English
WDSCDT3	WDSCDT3 (WDSC-DT3)	News-Public Affairs	SD	English
WDTVDT2	WDTVDT2 (WDTV-DT2)	News-Weather	SD	English
WEST12	News 12 Westchester (WEST12)	News	SD	English
WFMZDT2	WFMZDT2 (WFMZ-DT2)	News-Weather	SD	English
WFSBDT3	WFSBDT3 (WFSB-DT3)	Local News	SD	English
WFTVDT2	WFTVDT2 (WFTV-DT2)	News-Weather	SD	English
WGBXDT2	WGBXDT2 (WGBX-DT2)	News-Public Affairs	SD	English
WGBYDT2	WGBYDT2 (WGBY-DT2)	News-Public Affairs	SD	English
WGTVDT3	WGTVDT3 (WGTV-DT3)	News-Public Affairs	SD	English
WHTJDT3	WHTJDT3 (WHTJ-DT3)	News-Public Affairs	SD	English
WHTMDT3	WHTMDT3 (WHTM-DT3)	News-Weather	SD	English
WHYYDT3	WHYYDT3 (WHYY-DT3)	News-Public Affairs	SD	English
WIPBDT3	WIPBDT3 (WIPB-DT3)	News-Weather	SD	English
WISHDT2	WISHDT2 (WISH-DT2)	News-Weather	SD	English
WISHDT3	WISHDT3 (WISH-DT3)	News-Weather	SD	English
WJLADT2	WJLADT2 (WJLA-DT2)	News-Weather	SD	English
WKGBDT3	WKGBDT3 (WKGB-DT3)	News-Public Affairs	SD	English
WKRNDT2	WKRNDT2 (WKRN-DT2)	News-Weather	SD	English
WKYUDT3	WKYUDT3 (WKYU-DT3)	News-Weather	SD	English
WLIWDT3	WLIWDT3 (WLIW-DT3)	News-Public Affairs	SD	English
WMARDT3	WMARDT3 (WMAR-DT3)	News-Weather	SD	English
WMEADT3	WMEADT3 (WMEA-DT3)	News-Public Affairs	SD	English
WNC8	News Channel 8	Local News	SD	English
WNCNDT3	WNCNDT3 (WNCN-DT3)	News-Weather	SD	English
WNEODT2	WNEODT2 (WNEO-DT2)	News-Public Affairs	SD	English
WNEODT3	WNEODT3 (WNEO-DT3)	News-Public Affairs	SD	English
WNVCDT2	WNVCDT2 (WNVC-DT2)	News-Public Affairs-Access	SD	English
WNVCDT4	WNVCDT4 (WNVC-DT4)	News	SD	English
WNVCDT5	WNVCDT5 (WNVC-DT5)	News	SD	English
WNVTDT4	WNVTDT4 (WNVT-DT4)	News	SD	English
WNVTDT5	WNVTDT5 (WNVT-DT5)	News	SD	English
WNVTDT6	WNVTDT6 (WNVT-DT6)	News	SD	English
WNVTDT7	WNVTDT7 (WNVT-DT7)	News	SD	English
WNYEDT2	WNYEDT2 (WNYE-DT2)	Local News	SD	English
WPBTDT2	WPBTDT2 (WPBT-DT2)	News-Public Affairs	SD	English
WPHLDT4	WPHLDT4 (WPHL-DT4)	News-Traffic/Weather	SD	English

**FOR PUBLIC INSPECTION**

<b>Callsign</b>	<b>Network Description</b>	<b>Programming Genre</b>	<b>Resolution</b>	<b>Language</b>
WPMTDT3	WPMTDT3 (WPMT-DT3)	Local News	SD	English
WPSUDT3	WPSUDT3 (WPSU-DT3)	News-Public Affairs	SD	English
WPTVDT2	WPTVDT2 (WPTV-DT2)	News-Weather	SD	English
WRTVDT2	WRTVDT2 (WRTV-DT2)	Local News	SD	English
WTHRDT2	WTHRDT2 (WTHR-DT2)	News-Weather	SD	English
WTIUDT2	WTIUDT2 (WTIU-DT2)	News-Public Affairs	SD	English
WTSPDT2	WTSPDT2 (WTSP-DT2)	News-Weather	SD	English
WTVFDT2	WTVFDT2 (WTVF-DT2)	News-Public Affairs	SD	English
WUFTDT2	WUFTDT2 (WUFT-DT2)	News-Public Affairs	SD	English
WVTADT4	WVTADT4 (WVTA-DT4)	News-Public Affairs	SD	English

# Attachment D







Local Insight: Enter Zip Code

SEARCH

Digital Cable

What's New

Smart Surfing

On Demand

DVR

HDTV

Premiums

Pay-Per-View

What's On

# Smart Surfing

Effortlessly find television entertainment you want to watch.



MOVIES  
600-700s

KIDS  
300s

GENERAL  
ENTERTAINMENT  
100s

SPORTS  
500s

NEWS  
400s

Quickview



Taking Smart Surfing to the Next Level

Quickview channels are a great way to preview available shows in a specific genre all at once. The rabid sports fan can tune to the Sports Quickview channel on 500 to see what games are playing on their favorite sports networks. News junkies can tune to channel 400 to see what's happening on the most popular news channels.



Looking for something for the kids to watch?

Tune to channel 300 for a sampling of kids shows. Music lovers will love seeing what's playing on the various music networks on channel 800. Check out the latest On Demand offerings, weather information and a variety of general entertainment shows on Insight Quickview found on channel 100.

Browse by genre

Themed Line Up

We've made it easier to find the types of programming you're looking for by grouping them all in the lineup. Looking for sports? Tune to the 500's. Want to catch up on the latest news and information? Go to the 400s. And when the kids need something to watch simply tune to the 300s. Here's a sample of channels for each genre:

General Entertainment	Life, Home & Family	Kids	Multicultural	News & Documentaries	Sports	Movies	Music	HDTV
100s	200s	300s	350s	400s	500s	600s/700s	800s	900s
USA	A&E	nick	UNIVISION	CNN	ESPN	HBO	MTV	ESPN HD
abc	food	nick	HBO Latino	Discovery	BTN	SHOWTIME	VH1	UNIVISION HD
TNT	TLC	GN	tr3s	msnbc	ESPN2	stargz	CMT	Discovery HD
Lifetime	HSN	sprout	TLUGO	Travel	ESPN3	cinebox	fuse	HBO HD

Program guide



On-Screen Program Guide

To find out what's on right now, press GUIDE to access Listings by Time, which shows 90 minutes of listings per screen. As you navigate, the current program selection is highlighted in yellow and a description appears on-screen. Press OK/Select to view that program. Press INFO for additional information.

Listings appear in a grid format with channel numbers and network call letters on the left side and times across the top.

Program Guide

Listings are color-coded to identify types of programs:

- BLUE - Regular Programs
- PURPLE - Movies
- GREEN - Sports
- LIGHT BLUE - Kids' Programs

**My Insight**

- [My Local Insight](#)
- [Webmail](#)
- [Pay My Bill](#)
- [My Services](#)

**Our Products**

- [Digital Cable](#)
- [Broadband](#)
- [Phone](#)
- [Bundles](#)
- [Order Now](#)
- [What's On](#)
- [Insight Business](#)
- [Insight Media](#)

**Help Central**

- [General & Billing](#)
- [Digital Cable](#)
- [Broadband](#)
- [Phone](#)
- [Help Videos](#)
- [Ayuda](#)
- [Contact Us](#)

**Who We Are**

- [About Insight](#)
- [Our Values](#)
- [Community Involvement](#)
- [Meet Our Executives](#)
- [Our Directors](#)
- [News](#)
- [Investor Relations](#)
- [Careers](#)
- [Office Locations](#)

**Service Agreements**

- [Terms of Use](#)
- [Cable TV Service Agreement](#)
- [Broadband Service Agreement](#)
- [Phone Service Agreements](#)
- [Privacy Policy](#)
- [Disclosures](#)



Time Warner Cable Launches New Theme-Based Channel Lineup (Raleigh... <http://www.timewarcable.com/East/about/inthenewsdetails.ashx?PRI...>



## In The News

### Time Warner Cable Launches New Theme-Based Channel Lineup (Raleigh)

Release Date:05/27/2010

Morrisville, NC – Time Warner Cable today announced the launch of a new digital channel lineup that increases ease and convenience for Digital Cable customers to locate channels and find specific programming.

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 Triangle and Fayetteville area beginning June 2nd (see full roll-out schedule below). All Time Warner Cable digital customers across North and South Carolina will enjoy the new lineup by June 22nd.

"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."

The new channel lineup will be grouped as follows:

- 100s- Local Broadcasters & Local Programming
- 200s- Kids & Family, Learning & Discovery, Faith & Inspiration
- 300s- Entertainment, Home & Leisure, Shopping
- 400s- News & Information, Music
- 500s- Sports
- 600s- Movies
- 700s- Premiums, PPV & Events
- 800s- International
- 900s- Music Choice
- 1000s- On Demand
- 1100 and above- High Definition

For further convenience, customers can simply add a "1" to the digital channel number to find the HD version. For example, ESPN will be on channel 500, so the HD version will be found on 1500.

The rollout of the new digital lineup will occur over three weeks.

The schedule is as follows:

#### June 2nd

Fayetteville and surrounding areas  
Southern Pines  
Pinehurst  
Spring Lake  
Raeford  
Fort Bragg  
Dunn  
Wilson

#### June 8th

Raleigh and surrounding areas  
Cary  
Apex  
Fuquay-Varina  
Morrisville  
Holly Springs  
Wake Forest  
Youngsville  
Rolesville  
Zebulon  
Gamer  
Selma  
Goldsboro  
Farmville

#### June 16th

Durham, Chapel Hill and surrounding areas  
Carrboro  
Hillsborough  
Henderson  
Bunn

The theme-based channel lineup is the latest enhancement in making Time Warner Cable services simple and easy to navigate. For more information, customers can visit [www.YourTWC.com/EasyTV](http://www.YourTWC.com/EasyTV).

#### About Time Warner Cable

Time Warner Cable's Carolina Region provides video, internet and telephone services to more than 2.1 million residential and business customers in more than 400 cities and towns across North and South Carolina. Time Warner Cable is the second-largest cable operator in the U.S., with technologically advanced, well-clustered systems located in five geographic areas-New York State, the Carolinas, Ohio, southern California and Texas. Time Warner Cable serves more than 14 million customers who subscribe to one or more of its video, high-speed data and voice services. Time Warner Cable Business Class offers a suite of phone, internet, Ethernet and cable television services to businesses of all sizes. Time Warner Cable Media sales, the advertising arm of Time Warner Cable, offers national, regional and local companies innovative advertising solutions that are targeted and affordable. More information about the services of Time Warner Cable is available at [www.timewarcable.com](http://www.timewarcable.com).

Time Warner Cable Launches New Theme-Based Channel Lineup (Raleigh... <http://www.timewarnercable.com/East/about/inthenewsdetails.ashx?PRI...>

[www.twcbc.com](http://www.twcbc.com), and [www.twcm mediasales.com](http://www.twcm mediasales.com).

[Back to Index of News Articles](#)

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# Attachment E

July 2002

**AT&T CABLE**

**LOCAL / VARIETY**

- 2 NORTHWEST CABLE NEWS
- 3 KWFX
- 4 KOMO
- 5 KING
- 6 KONG
- 7 KIRO
- 8 DISCOVERY CHANNEL
- 9 KCTS
- 10 KTWB
- 11 KSTW
- 12 KBTC
- 13 KCPQ
- 14 KCB INTERNATIONAL CHANNEL
- 15 KHCY

**SHOPPING**

- 16 QVC
- 17 HSN / LEASED ACCESS
- 18 KWDK

**SPECIALTY**

- 19 HALLMARK
- 20 KTBW

**CIVIC**

- 21 GOVERNMENT ACCESS
- 22 KING COUNTY CIVIC TV
- 23 TVW
- 24 C-SPAN
- 25 C-SPAN1

**EDUCATION**

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- 27 UWTV
- 28 EDUCATIONAL ACCESS

**INTERNATIONAL**

- 29 KWOG

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- 30 FOX SPORTS NET
- 31 ESPN
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- 33 SPEED CHANNEL
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- 96 AMERICA'S COLLECTIBLES NETWORK
- 98 UNIVISION
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# Exhibit 5

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In re Complaint of	)	
	)	
Bloomberg L.P.	)	MB 11-104
	)	
v.	)	
	)	
Comcast Cable Communications	)	

**Declaration of Mark A. Israel**  
**July 27, 2011**

- 1) I am Mark A. Israel. I am a Senior Vice President and Managing Director in the Washington, DC office of Compass Lexecon, LLC, an economic consulting firm.
- 2) From August 2000-June 2006, I served as a full-time member of the faculty at Kellogg School of Management, Northwestern University. I received my Ph.D. in economics from Stanford University in 2001.
- 3) At Kellogg and Stanford, I taught graduate level courses in business strategy and economics. In my academic research, I specialize in the economics of industrial organization, which is the study of individual markets and includes the study of antitrust and regulatory issues, as well as the economics of information and insurance markets. My research has been published in leading economics journals including the *American Economic Review* and the *Rand Journal of Economics*.
- 4) I have worked in consulting at Compass Lexecon since 2006, where I have applied theoretical and empirical methods to the analysis of mergers and related antitrust issues, intellectual property, class certification, and damages calculations, in a range of industries including cable television, wireless communications, airlines, consumer products, financial markets, pharmaceuticals, publishing, and various high technology industries.
- 5) I submitted several reports to the Federal Communications Commission (“Commission”) in connection with the Comcast – NBCU transaction.<sup>1</sup> I also appeared before the Commission in connection with the proposed AT&T – T-Mobile transaction.<sup>2</sup> I attach my CV as Appendix B to this declaration.
- 6) In January 2011, the Commission issued its Memorandum Opinion and Order 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 (“FCC Order”).<sup>3</sup> As part of the FCC Order, the Commission adopted a “narrowly tailored condition” requiring that:<sup>4</sup>

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<sup>1</sup> *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*, Expert Report of Mark Israel and Michael L. Katz, “Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction,” MB Docket No. 10-56, February 26, 2010; *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*, Expert Report of Mark Israel and Michael L. Katz, “The Comcast/NBCU Transaction and Online Video Distribution,” MB Docket No. 10-56, May 4, 2010; *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*, Expert Report of Mark Israel and Michael L. Katz, “Economic Analysis of the Proposed Comcast-NBCU-GE Transaction,” MB Docket No. 10-56, July 20, 2010.

<sup>2</sup> *See Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer of Control of Licenses and Authorizations*, Notice of Ex Parte Meeting, WT Docket No. 11-65, July 15, 2011, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021692592>.

<sup>3</sup> *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*, Memorandum Opinion and Order, MB Docket No. 10-56, January 18, 2011 (hereinafter *FCC Order*).

<sup>4</sup> *FCC Order*, ¶ 122.

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.

The Commission defined independent news channels to be any "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."<sup>5</sup>

- 7) On June 13, 2011, Bloomberg L.P. ("Bloomberg") filed a complaint before the Commission alleging that Comcast Communications Corporation ("Comcast") failed to implement the neighborhooding requirement in the FCC Order.<sup>6</sup> Bloomberg requested that the Commission order Comcast to place Bloomberg Television in its existing news neighborhoods in the 35 most-populous Designated Market Areas ("DMAs") In the United States.
- 8) I have been asked by counsel for Comcast to make certain calculations based on channel line-up data, described in more detail below, assessing the extent to which the channel line-ups of Comcast and other top multi-video programming distributors (MVPDs) currently contain groupings of news channels.
- 9) To analyze channel line-ups, I rely upon data published by Tribune Media Services ("TMS").<sup>8</sup> TMS collects data from MVPDs on television listings and channel line-ups. These data commonly are used as inputs into electronic programming guides. Professor Gregory S. Crawford, an economist retained by Bloomberg, also relied on data from TMS.<sup>9</sup>
- 10) The TMS data consist of two sets of three databases. One set corresponds to the direct broadcast satellite ("DBS") providers (DirecTV and the DISH Network). The other set corresponds to all other MVPDs. Within each set, the three databases contain the following information:
  - The first database defines observations by headend identity, device, and channel position.

---

<sup>5</sup> FCC Order, footnote 492.

<sup>6</sup> *In re Complaint of Bloomberg L.P. v. Comcast Cable Communications, LLC*, Complaint, MB 11-104, June 13, 2011 (hereinafter *Complaint*).

<sup>8</sup> Various sources can provide data on channel line-ups. TMS is one such source. I also reviewed internal Comcast channel line-up data. Without taking a view on the data's accuracy, I rely upon TMS data for three reasons. First, it minimizes differences with the data used by Professor Crawford. Second, it allows me to examine channel line-ups offered by non-Comcast MVPDs. Third, due to the abbreviated timeframe to respond to the *Complaint*, it would have been too time-consuming to perform my entire analysis on multiple datasets.

<sup>9</sup> See *In re Complaint of Bloomberg L.P. v. Comcast Cable Communications, LLC*, Declaration of Gregory S. Crawford, MB 11-104, June 13, 2011 (hereinafter *Crawford Declaration*).

TMS updates its data frequently. Professor Crawford uses data from TMS that was current as of May 4, 2011. I independently obtained data from TMS that includes information that is current as of June 22, 2011.

MVPDs operate headends to receive programming signals and distribute them to customers. Devices correspond to the type of equipment receiving the signal on the customer premises, e.g., analog or digital devices. Channel position corresponds to the channel number at which a programming network appears on a particular channel line-up. For example, WJLA, the Washington, DC ABC affiliate is in channel position 7 on Comcast headend [REDACTED] in Alexandria, VA. My dataset contains approximately [REDACTED] observations involving [REDACTED] programming networks. This is very similar to the numbers that Professor Crawford reports.<sup>10</sup>

- The second database defines observations by headend and zip code. This dataset contains information on zip code, DMA, DMA rank, and headend owner. My (non-DBS) dataset contains approximately [REDACTED] observations comprising [REDACTED] headends in [REDACTED] communities owned by [REDACTED] MVPDs. This is consistent with the numbers that Professor Crawford reports.<sup>11</sup>
- The third database contains data on programming networks, including the name of each programming network. My dataset contains a total of [REDACTED] unique programming networks, though not all of these are currently carried by MVPDs in the data TMS collects. This is consistent with the number that Professor Crawford reports.<sup>12</sup>

11) To analyze the data, I merge the three databases for DBS MVPDs and separately merge the three datasets for non-DBS MVPDs. I then append the DBS data to the non-DBS data. The total dataset contains [REDACTED] observations at the headend-device-channel position level comprising [REDACTED] headends. Limiting the data to Comcast headends, my data include 411,300 observations over 1,014 headends. For comparison, Professor Crawford reports 405,311 observations across 1,014 Comcast headends.<sup>13</sup>

12) Before beginning my empirical analysis, I take a number of steps to clean the data. First, I drop all channels that expired in a given line-up prior to June 22, 2011 (the date on which I received the data from TMS). Second, some channel numbers are preceded by non-numeric characters (e.g., “F1 –”). I drop these characters in order to ensure that all channel position numbers are numeric and thus sort properly. At the request of Michael Egan, I focus much of my analysis on data for the top-ten cable MVPDs (Bright House Networks, Cableone, Cablevision Systems, Charter Communications, Comcast, Cox Communications, Insight Communications, Mediacom, Suddenlink (reported as Cequel in the TMS data), and Time Warner Cable), the two DBS providers (DirecTV and DISH Network), and the two telco providers (Verizon FiOS and AT&T U-Verse) (collectively “Top-14 MVPDs”).

13) Next, I address the fact that the TMS data report multiple line-ups for many headends. The TMS data report [REDACTED] headends across [REDACTED] MVPDs, including 1,014 Comcast headends. To

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<sup>10</sup> Crawford Declaration, ¶ 10.

<sup>11</sup> Crawford Declaration, ¶ 11. My raw data contain more unique communities than reported by Professor Crawford.

<sup>12</sup> Crawford Declaration, ¶ 12.

<sup>13</sup> Crawford Declaration, ¶ 13.

minimize differences with Professor Crawford, I follow his methodology to narrow the data to one channel line-up per headend. This methodology proceeds as follows:

- First, for those headends that include a digital channel line-up, keep the digital channel line-up;
- Second, for those headends that do not include a digital channel line-up but do include an analog channel line-up, keep the analog channel line-up;
- In the few cases in which a headend has neither a digital nor an analog channel line-up, keep the channel line-up with the largest total number of channels.

This procedure yields one channel line-up per head-end. In total, 47 percent of the headends are based on digital channel line-ups (84 percent of Comcast headends).

14) After limiting the data to a single channel line-up per headend, there remain instances in which the TMS data list multiple programming networks occupying the same channel position. Across all headends, 2.6 percent of channel positions list more than one programming network (0.24 percent for Comcast headends). To resolve these instances such that each channel position contains a single programming network, I first apply the “keep” and “drop” decision rules used by Professor Crawford, listed in Appendix C of the *Crawford Declaration*. The rules identify specific networks on specific channel positions that Professor Crawford keeps or drops from his analysis. After applying this rule, 2.6 percent of channel positions (0.23 percent for Comcast headends) still include multiple programming networks.

15) To resolve the remaining conflicts, I tag those networks that Professor Crawford identifies as “news” networks and then apply the following rules:

- If a conflict involves two non-news channels: keep the one that comes first alphabetically by callsign;
- If a conflict involves two news channels: keep the one that comes first alphabetically by callsign;
- If a conflict involves a news channel and a non-news channel, keep the news channel.

These steps result in a dataset that contains a single channel line-up per headend and a single programming network per channel position. Overall, my cleaned dataset contains [REDACTED] total observations (347,938 on Comcast headends).

16) To identify programming networks that qualify as “news” networks according to the FCC’s definition, I rely on the classifications described in the Declaration of Michael Egan.<sup>14</sup> For the purposes of my analysis, I consider only standard-definition English-language channels identified as carrying news programming to be defined as “news channels.”<sup>15</sup>

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<sup>14</sup> *In re Complaint of Bloomberg L.P. v. Comcast Cable Communications, LLC*, Declaration of Michael Egan, MB 11-104, July 27, 2011 (hereinafter *Egan Declaration*). Attachment A of the *Egan Declaration* describes the classification scheme in more detail. Attachment B of the *Egan Declaration* lists the channels categorized as news channels for all of the Top-14 MVPDs and those channels categorized as independent news channels on the Comcast systems are included as Attachment C.

<sup>15</sup> I found no instances in the data in which HD channels show up within SD news channel groupings.

- 17) Using these news network classifications, I perform a series of analyses to evaluate the presence and relative position of news networks in channel line-ups across the Top-14 MVPDs.
- 18) Table A-I in Appendix A lists the networks carried by Comcast in the 35 most-populous DMAs that are classified as news channels. Comcast operates headends in 26 of these 35 DMAs (“26 Relevant DMAs”). The table indicates whether Professor Crawford classifies each channel as “news” in his analysis. The classification developed in the *Egan Declaration* identifies many more news channels than does Professor Crawford’s classification. The average number of unique standard-definition news channels in Comcast headends in the top 35 DMAs that carry Bloomberg Television is 15.4 under the Egan classification, compared with 10.7 under Professor Crawford’s classification. When I include sports news with the Egan classification, I find an average of 16.4 unique news channels per headend. When I include both sports news and foreign-language news channels, the average is 17.7 news channels per headend. When, in addition, I take into account high-definition channels, the average number of news channel per headend is 24.5.
- 19) Table A-II in Appendix A summarizes the total number of news channels in each headend containing Bloomberg Television for the Top-14 MVPDs. I begin by counting the number of unique callsigns classified as a news channel in each headend for these providers. In instances where a callsign appears in multiple channel positions in a headend, it is only counted once. Each headend is then classified into a “bucket” representing the number (or range) of news channels it contains. Table A-II reports the number of headends in each bucket by MVPD.
- 20) At the request of Michael Egan, I next consider the presence of Bloomberg Television and CNBC in the headends of the Top-14 MVPDs in the 26 Relevant DMAs. First, I count the total number of headends found in the database for each MVPD in these DMAs. Next, I count only those that contain Bloomberg Television in their channel line-ups. I then construct “groupings” of news channels such that at least four out of five contiguous channels are identified as providing news programming.<sup>16</sup> Among these groupings of news channels for each headend, I consider the one containing the most channels. I count the number of headends where CNBC appears in the largest news grouping. Table I summarizes the number (and percentage) of headends by the channel positions where Bloomberg Television and CNBC are located.

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<sup>16</sup> I do not include empty channel positions in my determination of groupings of news channels.

Table I: Top 14 MVPDs in the 26 Relevant DMAs {{

	Total Headends	Headends that Carry BTV	Headends that Carry BTV on a Channel above 100	Headends that Carry CNBC on a Channel below 100
<b>Total for All MVPDs</b>	██████████	██████████	██████████	██████████
<b>Total for Top 14 MVPDs</b>	██████████	██████████	██████████	██████████
<b>Total for Top 10 Cable MSOs</b>	██████████	██████████	██████████	██████████
AT&T U-verse TV	██████████	██████████	██████████	██████████
Verizon FiOS	██████████	██████████	██████████	██████████
DIRECTV	██████████	██████████	██████████	██████████
Dish Network, LLC	██████████	██████████	██████████	██████████
Bright House Networks	██████████	██████████	██████████	██████████
Cableone	██████████	██████████	██████████	██████████
Cablevision Systems Corporation	██████████	██████████	██████████	██████████
Suddenlink	██████████	██████████	██████████	██████████
Charter Communications	██████████	██████████	██████████	██████████
Comcast Corporation	██████████	██████████	██████████	██████████
Cox Communications	██████████	██████████	██████████	██████████
Insight Communications Company	██████████	██████████	██████████	██████████
Mediacom LLC.	██████████	██████████	██████████	██████████
Time Warner Cable	██████████	██████████	██████████	██████████

	Headends that Carry BTV	Headends that Carry BTV on a Channel above 100	Headends that Carry CNBC on a Channel below 100
<b>Total for All MVPDs</b>	██████████	██████████	██████████
<b>Total for Top 14 MVPDs</b>	██████████	██████████	██████████
<b>Total for Top 10 Cable MSOs</b>	██████████	██████████	██████████
AT&T U-verse TV	██████████	██████████	██████████
Verizon FiOS	██████████	██████████	██████████
DIRECTV	██████████	██████████	██████████
Dish Network, LLC	██████████	██████████	██████████
Bright House Networks	██████████	██████████	██████████
Cableone	██████████	██████████	██████████
Cablevision Systems Corporation	██████████	██████████	██████████
Suddenlink	██████████	██████████	██████████
Charter Communications	██████████	██████████	██████████
Comcast Corporation	██████████	██████████	██████████
Cox Communications	██████████	██████████	██████████
Insight Communications Company	██████████	██████████	██████████
Mediacom LLC.	██████████	██████████	██████████
Time Warner Cable	██████████	██████████	██████████

}}

21) I also consider whether Comcast headends have multiple groupings of news channels, as defined by the methodology above. Table II reports the results for headeneds that carry Bloomberg Television.

**Table II: Comcast Headends with More than One Grouping of News Channels in the 26 Relevant DMAs**

	Headends
Carries BTV and has a Grouping of News Channels	455
Carries BTV in a Grouping of News Channels	206
Carries BTV and has Multiple Groupings of News Channels	312
Has Multiple News Groupings and Carries BTV in a Grouping of News Channels	161

22) The channel classification information I was provided also indicates whether a news channel is independent. Independent channels are those in which no entity that holds a 5% or greater interest in a top 15 cable network holds a 5% or greater ownership stake. I find that across all Comcast headends in the 26 Relevant DMAs, an average of 3.6 independent news channels are positioned outside of a grouping of news channels. Of these, an average of 1.7 are located in channel positions under 100.

23) At the request of counsel, I also consider the relative position of non-news channels not affiliated with Comcast. I was asked to look specifically at those Comcast headends (not limited to the 35 most-populous DMAs) that contain a four-out-of-five grouping of news channels that does not include Bloomberg Television. After determining which headends have such a grouping, I find which unaffiliated non-news channels are either contained with the grouping or within two channels positions of it. The number of headends in which each unique network appeared in those relative positions is summed in the table below.<sup>17</sup> The ten networks that appear most often in those positions are shown in Table III below.

**Table III: Unaffiliated Non-News Networks within Two Channels Positions (or within) a Four-out-of-Five Grouping of News Networks that Do Not Include Bloomberg Television**

Callsign	Description	Headends
ESPN	ESPN	207
DSC	The Discovery Channel	194
NGWILD	National Geographic Wild	188
NGC	National Geographic Channel	186
ESPN2	ESPN2	161
ESPNEWS	ESPNEWS	142
TRUTV	truTV	141
TLC	The Learning Channel	132
OWN	Oprah Winfrey Network	114
TOON	Cartoon Network	110

24) Finally, at the request of Michael Egan, I analyze the extent to which news channels are grouped in each of the Top-14 MVPD's headends in the 26 Relevant DMAs using various alternative definitions of news groupings. I do this by analyzing whether certain proportions of all news channels in a

<sup>17</sup> I aggregate the eastern-US and Pacific-coast feeds of the same network when summing the number of headends by callsign.

lineup are located in proximate channel locations. The proportions I consider are 60, 70, 80, and 90 percent of news channels within each lineup. I begin by counting the number of news channels on each headend. I then multiply this number by the threshold being considered and round up to the nearest integer. This represents the number of news channels that must be in proximate locations on the lineup. I then multiply that threshold number by 1.25 and round down to the nearest integer to find the total number of channels in which to look for the threshold number of news channels. The multiplier of 1.25 matches the ratio of five contiguous channel locations containing four news networks used by Professor Crawford.<sup>18</sup>

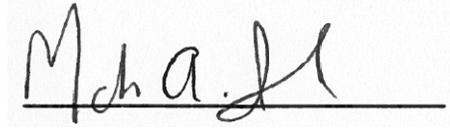
- 25) For example, take a lineup with 16 news networks, using the 60 percent threshold. To find the number of news channels at that threshold, I calculate  $16 * 0.6 = 9.6$  and round up to 10. This means that I need to find 10 news channels within a range of total channels to classify it as a grouping of news channels. That total range is found by multiplying  $10 * 1.25 = 12.5$  and rounding down to 12. Thus, in this example, ten news channels out of 12 consecutive channels constitutes a grouping.
- 26) Table A-III in Appendix A reports the number of headends that meet the proportion thresholds described above by MVPD for all headends in the 26 relevant DMAs.
- 27) In Table A-IV to Table A-X in Appendix A, I provide examples of groupings of news channels in lineups of several major MVPDs. The first is an experimental Comcast lineup available in Indiana. The others are for Time Warner in North Carolina, Verizon FIOS in Connecticut, AT&T in California, DISH Network in Ohio, DirecTV in New York, and Insight in Cincinnati, respectively.

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<sup>18</sup> *Crawford Declaration*, ¶ 32.

**FOR PUBLIC INSPECTION**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read "Mark A. Israel", is written over a solid horizontal line. The signature is cursive and somewhat stylized.

Mark A. Israel  
July 27, 2011  
Washington, DC

Appendix A

Table A-I: Comcast News Channels in the Top 35 DMAs

Callsign	Description	Crawford		Callsign	Description	Crawford	
		Egan News	News			Egan News	News
BLOOM	Bloomberg Business Television	Yes	Yes	GOAC012	Government Access - GOAC012	Yes	No
CALCHAN	California Channel	Yes	Yes	GOAC013	Government Access - GOAC013	Yes	No
CLTV	Chicagoland Television News	Yes	Yes	GOAC014	Government Access - GOAC014	Yes	No
CNBC	CNBC	Yes	Yes	GOAC015	Government Access - GOAC015	Yes	No
CNBCWLD	CNBC World	Yes	Yes	GOAC016	Government Access - GOAC016	Yes	No
CNN	Cable News Network	Yes	Yes	GOAC017	Government Access - GOAC017	Yes	No
CNNI	CNN International	Yes	Yes	GOAC018	Government Access - GOAC018	Yes	No
CSPAN	CSPAN	Yes	Yes	GOAC019	Government Access - GOAC019	Yes	No
CSPAN2	CSPAN2	Yes	Yes	GOAC020	Government Access - GOAC020	Yes	No
CSPAN3	CSPAN3	Yes	Yes	GOAC021	Government Access - GOAC021	Yes	No
CTNPUB	CTN Connecticut Public Affairs	Yes	Yes	GOAC022	Government Access - GOAC022	Yes	No
FBN	Fox Business	Yes	Yes	GOAC023	Government Access - GOAC023	Yes	No
FNC	Fox News Channel	Yes	Yes	GOAC024	Government Access - GOAC024	Yes	No
HLN	HLN (Formerly Headline News)	Yes	Yes	GOAC025	Government Access - GOAC025	Yes	No
KUSADT2	KUSADT2 (KUSA-DT2) <sup>1</sup>	Yes	Yes	GOAC026	Government Access - GOAC026	Yes	No
MSNBC	MSNBC	Yes	Yes	GOAC027	Government Access - GOAC027	Yes	No
N12NJ	News 12 New Jersey	Yes	Yes	GOAC028	Government Access - GOAC028	Yes	No
NC5	News Channel 5	Yes	Yes	GOAC029	Government Access - GOAC029	Yes	No
NECN	New England Cable News	Yes	Yes	GOAC030	Government Access - GOAC030	Yes	No
NEWS	Local News	Yes	Yes	GOAC042	Government Access - GOAC042	Yes	No
NWCN	Northwest Cable News	Yes	Yes	GOAC043	Government Access - GOAC043	Yes	No
NWSKMGH	Newschannel 207 (KMGH News)	Yes	Yes	GOAC046	Government Access - GOAC046	Yes	No
NYSLC	New York State Legislative Channel	Yes	Yes	GOAC049	Government Access - GOAC049	Yes	No
PCN	Pennsylvania Cable Network	Yes	Yes	GOAC052	Government Access - GOAC052	Yes	No
PCNC	Pittsburgh Cable News Channel	Yes	Yes	GOAC055	Government Access - GOAC055	Yes	No
SNN6	SNN News 6	Yes	Yes	GOAC058	Government Access - GOAC058	Yes	No
TVW	TV WASHINGTON	Yes	Yes	GOAC060	Government Access - GOAC060	Yes	No
TXCN	Texas Cable News	Yes	Yes	GOAC063	Government Access - GOAC063	Yes	No
WEST12	News 12 Westchester (WEST12)	Yes	Yes	GOAC064	Government Access - GOAC064	Yes	No
WNC8	News Channel 8	Yes	Yes	GOAC067	Government Access - GOAC067	Yes	No
BBCWLD	BBC WORLD	Yes	No	GOAC070	Government Access - GOAC070	Yes	No
CBB	Community Bulletin Board	Yes	No	GOAC071	Government Access - GOAC071	Yes	No
CN100	Comcast 100	Yes	No	GOAC074	Government Access - GOAC074	Yes	No
CURRENT	Current TV	Yes	No	GOAC075	Government Access - GOAC075	Yes	No
DWR	Doppler Weather Radar	Yes	No	GOAC076	Government Access - GOAC076	Yes	No
GOAC002	Government Access - GOAC002	Yes	No	GOAC077	Government Access - GOAC077	Yes	No
GOAC003	Government Access - GOAC003	Yes	No	GOAC078	Government Access - GOAC078	Yes	No
GOAC004	Government Access - GOAC004	Yes	No	GOAC092	Government Access - GOAC092	Yes	No
GOAC005	Government Access - GOAC005	Yes	No	GOAC095	Government Access - GOAC095	Yes	No
GOAC006	Government Access - GOAC006	Yes	No	GOAC096	Government Access - GOAC096	Yes	No
GOAC007	Government Access - GOAC007	Yes	No	GOAC097	Government Access - GOAC097	Yes	No
GOAC008	Government Access - GOAC008	Yes	No	GOAC098	Government Access - GOAC098	Yes	No
GOAC009	Government Access - GOAC009	Yes	No	GOAC099	Government Access - GOAC099	Yes	No
GOAC010	Government Access - GOAC010	Yes	No	GOAC100	Government Access - GOAC100	Yes	No
GOAC011	Government Access - GOAC011	Yes	No	GOAC389	Government Access - GOAC389	Yes	No

<sup>1</sup> Listed as "Local News (9 News Colorado)" in the Crawford Declaration

Callsign	Description	Crawford	
		Egan News	News
GOAC915	Government Access - GOAC915	Yes	No
GOAC965	Government Access - GOAC965	Yes	No
KARED2	KARED2 (KARE-DT2)	Yes	No
KBDID3	KBDID3 (KBDI-DT3)	Yes	No
KBTCD2	KBTCD2 (KBTC-DT2)	Yes	No
KCPQD2	KCPQD2 (KCPQ-DT2)	Yes	No
KCRTCAB	KCRT CABLE 49	Yes	No
KGWDT2	KGWDT2 (KGW-DT2)	Yes	No
KHOUD2	KHOUD2 (KHOU-DT2)	Yes	No
KQEDD3	KQEDD3 KQED World (KQED-DT3)	Yes	No
KSHBD2	KSHBD2 (KSHB-DT2)	Yes	No
KSLD3	KSLD3 (KSL-DT3)	Yes	No
KSTPD2	KSTPD2 (KSPT-DT2)	Yes	No
KTCAD2	KTCAD2 (KTCA-DT2)	Yes	No
KTCAD4	KTCAD4 (KTCA-DT4)	Yes	No
KUEDD2	KUEDD2 (KUED-DT2)	Yes	No
KUEND2	KUEND2 (KUEN-DT2)	Yes	No
KXTVD2	KXTVD2 (KXTV-DT2)	Yes	No
LINKTV	Link TV	Yes	No
LWEA	Local Weather	Yes	No
MUNAC	Municipal Access	Yes	No
MUNIC	City of Houston-The Municipal Char	Yes	No
N12TW	News 12 Traffic and Weather	Yes	No
NBCPLUS	NBC Plus	Yes	No
PEG009	Public, Educational, Government PE	Yes	No
PEG010	Public, Educational, Government PE	Yes	No
PEG014	Public, Educational, Government PE	Yes	No
PEG020	Public, Educational, Government PE	Yes	No
PEG026	Public, Educational, Government PE	Yes	No
PEG027	Public, Educational, Government PE	Yes	No
PEG028	Public, Educational, Government PE	Yes	No
PEG030	Public, Educational, Government PE	Yes	No
PEG065	Public, Educational, Government PE	Yes	No
TANTRF	Tango Traffic	Yes	No
TV21	Baltimore City Channel	Yes	No
TWC	The Weather Channel	Yes	No
VA16	Fairfax County Government	Yes	No
WBCCD4	WBCCD4 (WBCC-DT4)	Yes	No
WDSCD2	WDSCD2 (WDSC-DT2)	Yes	No
WDSCD3	WDSCD3 (WDSC-DT3)	Yes	No
WDTVDT2	WDTVDT2 (WDTV-DT2)	Yes	No
WFMZD2	WFMZD2 (WFMZ-DT2)	Yes	No
WFSBD3	WFSBD3 (WFSB-DT3)	Yes	No
WFTVD2	WFTVD2 (WFTV-DT2)	Yes	No
WGBXD2	WGBXD2 (WGBX-DT2)	Yes	No

Callsign	Description	Crawford	
		Egan News	News
WGBYD2	WGBYD2 (WGBY-DT2)	Yes	No
WGTVD3	WGTVD3 (WGTV-DT3)	Yes	No
WHTJD3	WHTJD3 (WHTJ-DT3)	Yes	No
WHTMD3	WHTMD3 (WHTM-DT3)	Yes	No
WHYYD3	WHYYD3 (WHYY-DT3)	Yes	No
WIPBD3	WIPBD3 (WIPB-DT3)	Yes	No
WISHD2	WISHD2 (WISH-DT2)	Yes	No
WISHD3	WISHD3 (WISH-DT3)	Yes	No
WJLAD2	WJLAD2 (WJLA-DT2)	Yes	No
WKGBD3	WKGBD3 (WKG B-DT3)	Yes	No
WKRND2	WKRND2 (WKR N-DT2)	Yes	No
WKYUD3	WKYUD3 (WKYU-DT3)	Yes	No
WLIWD3	WLIWD3 (WLIW-DT3)	Yes	No
WMARD3	WMARD3 (WMAR-DT3)	Yes	No
WMEAD3	WMEAD3 (WMEA-DT3)	Yes	No
WNCND3	WNCND3 (WNCN-DT3)	Yes	No
WNEOD2	WNEOD2 (WNEO-DT2)	Yes	No
WNEOD3	WNEOD3 (WNEO-DT3)	Yes	No
WNVCD2	WNVCD2 (WNV C-DT2)	Yes	No
WNVCD4	WNVCD4 (WNV C-DT4)	Yes	No
WNVCD5	WNVCD5 (WNV C-DT5)	Yes	No
WNVTD4	WNVTD4 (WNV T-DT4)	Yes	No
WNVTD5	WNVTD5 (WNV T-DT5)	Yes	No
WNVTD6	WNVTD6 (WNV T-DT6)	Yes	No
WNVTD7	WNVTD7 (WNV T-DT7)	Yes	No
WNYED2	WNYED2 (WNYE-DT2)	Yes	No
WPBTD2	WPBTD2 (WPBT-DT2)	Yes	No
WPHLD4	WPHLD4 (WPHL-DT4)	Yes	No
WPMTD3	WPMTD3 (WPMT-DT3)	Yes	No
WPSUD3	WPSUD3 (WPSU-DT3)	Yes	No
WPTVD2	WPTVD2 (WPTV-DT2)	Yes	No
WRTVD2	WRTVD2 (WRTV-DT2)	Yes	No
WTHRDT2	WTHRDT2 (WTHR-DT2)	Yes	No
WTHRSCN	WeatherScan Local Network	Yes	No
WTIUD2	WTIUD2 (WTIU-DT2)	Yes	No
WTSPD2	WTSPD2 (WTSP-DT2)	Yes	No
WTVFD2	WTVFD2 (WTVF-DT2)	Yes	No
WTVJD2	WTVJD2 (WTVJ-DT2)	Yes	No
WUFTD2	WUFTD2 (WUFT-DT2)	Yes	No
WVITD2	WVITD2 (WVIT-DT2)	Yes	No
WVTAD4	WVTAD4 (WVTA-DT4)	Yes	No



Table A-III: Percent-Based Groupings for Headends with BTV for the Top 14 MVPDs in the 26 Relevant DMAs {{

	Headends Meeting Threshold				Total Headends	Percent of Headends			
	60%	70%	80%	90%		60%	70%	80%	90%
AT&T	█	█	█	█	█	█	█	█	█
Verizon	█	█	█	█	█	█	█	█	█
DIRECTV	█	█	█	█	█	█	█	█	█
Dish	█	█	█	█	█	█	█	█	█
TOP 10 MSOs	█	█	█	█	█	█	█	█	█
TOP 9 MSOs (Ex. Comcast)	█	█	█	█	█	█	█	█	█
Bright House	█	█	█	█	█	█	█	█	█
Cablevision	█	█	█	█	█	█	█	█	█
Suddenlink	█	█	█	█	█	█	█	█	█
Charter	█	█	█	█	█	█	█	█	█
Comcast <sup>1</sup>	█	█	█	█	█	█	█	█	█
Cox	█	█	█	█	█	█	█	█	█
Insight	█	█	█	█	█	█	█	█	█
Mediacom	█	█	█	█	█	█	█	█	█
Time Warner	█	█	█	█	█	█	█	█	█

}}

Note: Table is constructed by first counting the number of news channels on each headend. This number is then multiplied by the threshold percentage being considered and round up to the nearest integer. This represents the number of news channels that must be in proximate locations on the lineup. That threshold number of channels is multiplied by 1.25 and rounded down to the nearest integer to find the total number of channels in which to look for the threshold number of news channels.

<sup>1</sup> Of the 25 Comcast headends that carry at least 60% of their news channels in a grouping by this definition, 17 carry Bloomberg Television in the relevant news grouping. The remaining eight headends have between 3 and 12 news channels in their lineups.

**Table A-IV: Grouping of News Channels in Comcast Headend** [REDACTED]

<b>Channel</b>	<b>Callsign</b>	<b>Description</b>
105	FNC	Fox News Channel
106	CNN	Cable News Network
107	HLN	HLN (Formerly Headline News)
108	MSNBC	MSNBC
111	TWC	The Weather Channel
112	WTHRSCN	WeatherScan Local Network
115	CNBC	CNBC
116	BLOOM	Bloomberg Business Television
117	FBN	Fox Business
125	CSPAN	CSPAN
126	CSPAN2	CSPAN2
127	CSPAN3	CSPAN3
130	WRTVDT2	WRTVDT2 (WRTV-DT2)
132	WISHDT2	WISHDT2 (WISH-DT2)
134	WTHRDT2	WTHRDT2 (WTHR-DT2)

**Table A-V: Grouping of News Channels in Time Warner Cable Headend** [REDACTED]

<b>Channel</b>	<b>Callsign</b>	<b>Description</b>
400	CNN	Cable News Network
401	HLN	HLN (Formerly Headline News)
403	FNC	Fox News Channel
404	FBN	Fox Business
406	MSNBC	MSNBC
407	CNBC	CNBC
408	CNBCWLD	CNBC World
412	BLOOM	Bloomberg Business Television
413	CURRENT	Current TV
414	NWS14	News 14 Carolina (NWS14)
415	CSPAN	CSPAN
416	CSPAN2	CSPAN2
417	CSPAN3	CSPAN3
418	TWC	The Weather Channel

Table A-VI: Grouping of News Channels in Verizon FIOS Headend [REDACTED]

Channel	Callsign	Description
100	CNN	Cable News Network
101	HLN	HLN (Formerly Headline News)
102	CNBC	CNBC
103	MSNBC	MSNBC
104	BLOOM	Bloomberg Business Television
105	CNNI	CNN International
106	CNBCWLD	CNBC World
107	BBCWLD	BBC WORLD
108	ABCNEWS	ABC News Now
109	CSPAN	CSPAN
110	CSPAN2	CSPAN2
111	CSPAN3	CSPAN3
117	FBN	Fox Business
118	FNC	Fox News Channel
119	TWC	The Weather Channel

Table A-VII: Grouping of News Channels in AT&amp;T Headend [REDACTED]

Channel	Callsign	Description
202	CNN	Cable News Network
203	HLN	HLN (Formerly Headline News)
205	CNNI	CNN International
210	FNC	Fox News Channel
211	FBN	Fox Business
215	MSNBC	MSNBC
216	CNBC	CNBC
217	CNBCWLD	CNBC World
222	BLOOM	Bloomberg Business Television
225	TWC	The Weather Channel
230	CSPAN	CSPAN
231	CSPAN2	CSPAN2
232	CSPAN3	CSPAN3
243	ABCNEWS	ABC News Now

Table A-VIII: Grouping of News Channels in Dish Network Headend [REDACTED]

Channel	Callsign	Description
200	CNN	Cable News Network
202	HLN	HLN (Formerly Headline News)
203	BLOOM	Bloomberg Business Television
204	TRUTV	truTV
205	FNC	Fox News Channel
206	FBN	Fox Business
207	CNBCWLD	CNBC World
208	CNBC	CNBC
209	MSNBC	MSNBC
210	CSPAN	CSPAN
211	CSPAN2	CSPAN2

Table A-IX: Grouping of News Channels in DirecTV Headend [REDACTED]

Channel	Callsign	Description
348	FSTV	Free Speech TV
350	CSPAN	CSPAN
351	CSPAN2	CSPAN2
352	NEWSMIX	DIRECTV NEWS MIX
353	BLOOM	Bloomberg Business Television
354	RRTV1	Resort & Residence TV
355	CNBC	CNBC
356	MSNBC	MSNBC
357	CNBCWLD	CNBC World
358	CURRENT	Current TV
359	FBN	Fox Business
360	FNC	Fox News Channel

Table A-X: Groupings of News Channels in Insight Headend [REDACTED]

Channel	Callsign	Description
42	FNC	Fox News Channel
43	MSNBC	MSNBC
44	CNBC	CNBC
45	HLN	HLN (Formerly Headline News)
46	CNN	Cable News Network
402	ICN6	Insight Communications - ICN 6
406	FNC	Fox News Channel
407	CNN	Cable News Network
409	HLN	HLN (Formerly Headline News)
411	BLOOM	Bloomberg Business Television
412	CNBC	CNBC
414	MSNBC	MSNBC
415	FBN	Fox Business
430	TWC	The Weather Channel
431	WLWTD2	WLWTD2 (WLWT-DT2)
432	WCPODT2	WCPODT2 (WCPO-DT2)
445	CSPAN	CSPAN
446	CSPAN2	CSPAN2
447	CSPAN3	CSPAN3

**Appendix B**

**Mark A. Israel**  
**Senior Vice President and Managing Director**

**July 2011**

Compass Lexecon  
1101 K Street NW  
8th Floor  
Washington, DC 20005  
(202) 589-3484 (direct)  
[misrael@compasslexecon.com](mailto:misrael@compasslexecon.com)

**AREAS OF SPECIALIZATION**

- Industrial organization economics
- Econometric analyses, particularly involving sophisticated modeling on large datasets
- Competitive analysis of horizontal and vertical mergers, including merger simulation techniques
- Economic and econometric analysis of class certification in price fixing and other matters
- Economic and econometric analysis of damages in antitrust and intellectual property matters
- Econometric analyses of dynamic consumer choice models
- Econometric analyses of asymmetric information, risk, and insurance

**EDUCATION**

Ph.D., in Economics, STANFORD UNIVERSITY, June 2001.

M.A., in Economics, UNIVERSITY OF WISCONSIN-MADISON, August 1992

B.A., in Economics, ILLINOIS WESLEYAN UNIVERSITY, Summa Cum Laude, May 1991.

**PROFESSIONAL EXPERIENCE**

Compass Lexecon, Chicago, Illinois and Washington, DC. Senior Vice President and Managing Director, Washington DC Office, November 2010 – Present; Senior Vice President, January 2009 – November 2010; Vice President, January 2008-December 2008; Economist, January 2006 – December 2007.

Kellogg School of Management, Northwestern University, Evanston, Illinois. Assistant Professor of Management and Strategy, September 2000 – June 2007; Visiting Associate Professor of Management and Strategy, September 2007 – August 2008.

State Farm Insurance, Bloomington, Illinois Research Administrator, August 1992 – August 1995.

Illinois Wesleyan University, Bloomington, Illinois, Visiting Professor, January – June 1993.

**EXPERT REPORTS & AFFIDAVITS**

Expert Report of Robert Willig, Mark Israel, Bryan Keating, and Jonathan Orszag, “Response to Supplementary Comments of Hubert Horan,” Docket DOT-OST-2009-1055, October 22, 2010.

Expert Report of Robert Willig, Mark Israel, Bryan Keating, and Jonathan Orszag, “Measuring Consumer Benefits from Antitrust Immunity for Delta Air Lines and Virgin Blue Carriers,” Docket DOT-OST-2009-1055, October 13, 2010.

Expert Report of Mark Israel and Michael L. Katz, “Economic Analysis of the Proposed Comcast-NBCU-GE Transaction,” Federal Communications Commission, MB Docket 10-56, July 20, 2010.

Expert Report of Mark Israel and Michael L. Katz, “The Comcast/NBCU Transaction and Online Video Distribution,” Federal Communications Commission, MB Docket 10-56, May 4, 2010.

Expert Report of Mark Israel and Michael L. Katz, “Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction,” Federal Communications Commission, MB Docket 10-56, February 26, 2010.

Expert Report of Robert Willig, Mark Israel, and Bryan Keating, “Competitive Effects of Airline Antitrust Immunity: Response of Robert Willig, Mark Israel, and Bryan Keating” in Docket DOT-OST-2008-0252, January 11, 2010

Affidavit of Dr. Mark A. Israel on Class Certification in Re: Puerto Rican Cabotage Antitrust Litigation, in the United States District Court for the District of Puerto Rico, MDL Docket No. 3:08-md-1960 (DRD), December 10, 2009

Expert Report of Robert Willig, Mark Israel, and Bryan Keating, “Competitive Effects of Airline Antitrust Immunity” in Docket DOT-OST-2008-0252, September 8, 2009

Expert Report and Supplemental Expert Report of Dennis W. Carlton and Mark Israel in Re: Toys “R” Us-Delaware, Inc., and Goeffrey Inc. v. Chase Bank USA N.A. in American Arbitration Association New York, New York, Commercial Arbitrations No. 13-148-02432-08, February 27, 2009 (Expert Report), March 20, 2009 (Supplemental Expert Report)

Paper commissioned by National Collegiate Athletic Association (with Jonathan Orszag), “The Empirical Effects of Collegiate Athletics: An Update Based on 2004-2007 Data,” February 2009

Expert Reports of James Levinsohn and Mark Israel in Re: 2006 NPM Adjustment Proceeding pursuant to Master Settlement Agreement, October 6, 2008 (Expert Report), January 16, 2009 (Expert Report), March 10, 2009 (Expert Report)

**SELECTED OTHER CONSULTING ENGAGEMENTS DURING THE PAST 5 YEARS**

Appearance in FCC Workshop of Economists, Ex Parte Meeting, WT Docket No. 11-65, July 15, 2011, in regard to ATT/T-Mobile transaction, July 2011

Econometric analysis of air traffic at major US airports, 2011

Assessment of the competitive impact of low-cost-carrier competition in Washington DC and New York airports, 2011

Analysis of consumer benefits and lack of competitive harm from two international airline alliances, 2010

Development of merger simulation model for a vertical merger in the consumer beverages industry, 2009

Econometric analysis of price changes in the context of analyzing class certification of high technology products, 2008-2009

Development of econometric model to forecast pharmaceutical expenditures, 2009

Economic and econometric analysis of competition between airlines and potential competitive effects in private litigation on a major airline merger, 2008

Assessment of market definition and antitrust issues for a potential airline merger, 2008

Development and implementation of a Monte Carlo simulation model to assess risk and return on investments for a large not-for-profit charitable foundation, 2008

Econometric measurement of the importance of network effects in credit cards in the context of measuring damages to a major credit card issuer in litigation, 2007-8

Economic and econometric analysis of competition in textbooks, demonstrating lack of competitive harm from a merger between two textbook publishers, 2007

Economic and econometric analysis of competition between financial derivatives and exchanges, demonstrating lack of competitive harm from merger of two exchanges, 2006-2007

Analysis of price adjustments in contracts for purchase of pharmaceuticals to demonstrate lack of common classwide impact in class certification proceeding, 2006.

**STRATEGIC CONSULTING ENGAGEMENTS**

Ingram Barge Company, Nashville, TN, 2006-2007. Provided analysis and guidance in development of strategic plan. Developed game theoretical framework to assist in investment and information management decisions.

**PUBLISHED ARTICLES**

“Proper Treatment of Buyer Power in Merger Review,” (with Dennis W. Carlton), *Review of Industrial Organization*, July 2011.

“Response to Gopal Das Varma’s Market Definition, Upward Pricing Pressure, and the Role of the Courts: A Response to Carlton and Israel (with Dennis W. Carlton), *The Antitrust Source*, December 2010.

“Will the New Guidelines Clarify or Obscure Antitrust Policy?” (with Dennis W. Carlton), *The Antitrust Source*, October 2010.

“Should Competition Policy Prohibit Price Discrimination?” (with Dennis W. Carlton), *Global Competition Review*, 2009.

“Services as Experience Goods: an Empirical Examination of Consumer Learning in Automobile Insurance,” *The American Economic Review*, December 2005.

“Tenure Dependence in Consumer-Firm Relationships: an Empirical Analysis of Consumer Departures from Automobile Insurance Firms,” *The Rand Journal of Economics*, Spring 2005.

“The Impact of Youth Characteristics and Experiences on Transitions Out of Poverty,” with Michael Seeborg, *The Journal of Socio-Economics*, 1998,

“Racial Differences in Adult Labor Force Transition Trends,” with Michael Seeborg, *The Journal of Economics*, 1994.

**RESEARCH IN PROGRESS**

“Do We Drive More Safely When Accidents are More Expensive? Identifying Moral Hazard from Experience Rating Schemes.”

“Who Can See the Future? Information and Consumer Reactions to Future Price Discounts.”

“Where is All the Hidden Information Hiding? Evidence from Automobile Insurance Panel Data.”

“Foundations of State Insurance Regulation: An Analysis of Motivations for the McCarran-Ferguson Act.”

**GRANTS AND HONORS**

Searle Fund for Policy Research Grant, 2004-2006, for “An Empirical Examination of Asymmetric Information in Insurance Markets.”

Kellogg School of Management Chairs’ Core Course Teaching Award, 2003 & 2005.

Bradley Dissertation Fellowship, Stanford University, 1999-2000.

Stanford University, Outstanding Second Year Paper Prize, 1997.

University of Wisconsin, Madison, Outstanding First Year Paper Prize, 1992.

**SELECTED PRESENTATIONS**

The American Bar Association Forum on Air & Space Law, 2011 Update Conference, Antitrust Issues: What’s on the Horizon for the Industry, Panelist.

American Bar Association Section of Antitrust Law, Antitrust in the Airline Industry Panelist, September, 2010.

Northwestern University/University of Chicago Industrial Organization/Marketing Conference, 2005.

National Bureau of Economic Research, Winter Industrial Organization Meetings, 2004.

CSIO Toulouse Industrial Organization Conference, Paper Presentation, 2004

American Risk and Insurance Association Annual Meetings, Paper Presentation, 2004

International Industrial Organization, Paper Presentation, 2004

Moderator and Chair, Kellogg School of Management Technology Conference, 2002 & 2004.

**SELECTED ACADEMIC SEMINARS**

Yale University  
University of Arizona  
Washington University, St. Louis  
University of Pennsylvania  
University of Toronto  
UCLA  
University of Wisconsin-Madison  
Massachusetts Institute of Technology  
Harvard University  
University of Chicago  
Columbia University  
University of Texas  
Carnegie Mellon University  
University of California, Irvine  
University of California, San Diego

**REFEREE FOR ACADEMIC JOURNALS**

American Economic Review  
The Journal of Industrial Economics  
The Rand Journal of Economics  
Journal of the European Economic Association  
The Review of Economic Studies  
The Review of Economics and Statistics  
Journal of Risk and Insurance