FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Complaint of	)	
	)	
BLOOMBERG L.P.	)	MB Docket No. 11-104
	)	
v.	)	
	)	
COMCAST CABLE COMMUNICATIONS, LLC	)	
	)	
	)	
	)	

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To: The Chief, Media Bureau

REPLY OF BLOOMBERG L.P. TO ANSWER OF COMCAST CABLE COMMUNICATIONS, LLC

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To: The Chief, Media Bureau

REPLY OF BLOOMBERG L.P. TO ANSWER OF COMCAST CABLE COMMUNICATIONS, LLC

Bloomberg L.P. ("Bloomberg") hereby replies[1] to the Answer of Comcast Cable Communications, LLC[2] ("Comcast") to Bloomberg's Complaint ("Complaint") that Comcast has failed to comply with the news neighborhooding condition adopted by the Federal Communications Commission ("Commission") in its 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.[3]

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[1] On August 2, 2011, the Commission granted Bloomberg's request for an extension of time to file this Reply until August 30, 2011. Therefore, this Reply is timely filed. *See* Email from Steven Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau, Federal Communications Commission to Stephen Díaz Gavin, Counsel to Bloomberg (Aug. 2, 2011) (on file with Bloomberg) ("For the reasons set forth in the Consent Motion for Extension of Time filed by Bloomberg L.P., the extension of time to file a Reply is granted as requested.").

[2] *See* Answer of Comcast Cable Communications LLC, *In re Bloomberg L.P., Complainant v. Comcast Cable Communications, LLC, Defendant*, MB Docket No. 11-104 (filed July 27, 2011) ("Answer").

[3] *See* In re 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) ("FCC Order").

I. INTRODUCTION AND SUMMARY

This case revolves around two narrow and straightforward questions: (1) Whether the news neighborhooding condition applies to news neighborhoods that were being carried by Comcast on the date the Commission approved the Comcast-NBCU Merger and are being carried today; and (2) whether the groupings of news channels identified by Bloomberg in the Complaint qualify as neighborhoods pursuant to the terms of that condition.

The answers to these two questions may be found in the language of the news neighborhooding condition itself. First, the Commission stated that the condition applied if "Comcast *now or in the future* carries news and/or business news channels in a neighborhood."[4] Thus, it is clear that <u>any news neighborhood in existence on the date of the FCC Order or thereafter would be covered</u>. Second, the Commission defined a neighborhood to refer to "*a significant number or percentage* of news and/or business news channels substantially adjacent to one another in a system's channel lineup."[5] Thus to the extent that Comcast today is carrying "a significant number or percentage of news channels substantially adjacent to one another in a system's channel lineup," the condition applies. In its Complaint, Bloomberg identified 368 groupings where there are at least four news channels in a block of five adjacent channel positions. These groupings qualify as neighborhoods for two independent reasons: they contain both a "significant number" and a "significant percentage" of news channels. Since Comcast is currently carrying these neighborhoods, it must comply with the news neighborhooding condition.

In its Answer, Comcast attempts to rewrite the news neighborhooding condition. Rather than applying to news neighborhoods that Comcast carries "now or in the future," Comcast instead wants the condition to cover only news neighborhoods that it might create "in the future."

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[4] *Id.* at 4358 (App. A, Sec. III.2) (emphasis added).

[5] *Id.* (emphasis added).

Similarly, instead of interpreting the term "neighborhood" to cover any grouping of "a significant number or percentage" of news channels, Comcast contends that only a grouping of "all or a substantial majority" of news channels qualifies as a neighborhood. Comcast, however, is obligated to comply with the news neighborhood condition that the Commission adopted, not a hypothetical version that Comcast wishes the Commission had adopted instead.

Beyond trying to rewrite the FCC Order, Comcast also attempts to re-litigate the merits of the Commission's decision to impose the news neighborhooding condition upon it, complaining that including Bloomberg TV ("BTV") in existing news neighborhoods is unwarranted and will be disruptive to programmers and consumers – an allegation that is not only unsupported by the facts but not even mentioned in the FCC Order. As will be demonstrated below, Comcast's "Chicken-Little" like warnings that the sky will fall if the Commission requires Comcast to abide by the condition are wildly exaggerated and belied by experience. Even more importantly, they have no place in this proceeding. On January 21, 2011, Comcast (along with GE and NBCU) in a Commission filing "accept[ed] as binding the conditions and enforceable commitments included in the [FCC Order] and expressly waive[d] any right they may have to challenge the Commission's legal authority to adopt and enforce such conditions and commitments."[6] If Comcast believed at that time that the terms of the news neighborhooding condition were too onerous for the company to endure, it was free to seek reconsideration of the FCC Order or to refuse the Commission's grant of its application and instead seek an administrative hearing. It did not. As such, Comcast is now bound to comply with the terms of the news neighborhooding condition as written.

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[6] 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).

The news neighborhooding condition is only scheduled to be in effect for seven years,[7] and Comcast has spent nearly 10% of that time fighting a straightforward interpretation of the condition. Given that the seven-year clock is currently ticking, each day of delay in resolving this Complaint represents a partial victory for Comcast. It is, therefore, imperative that the Commission act here in an expeditious manner; in particular, the Commission should quickly find that Comcast is violating the news neighborhooding condition and order Comcast within sixty days to include BTV in any grouping of four news channels in a block of five adjacent channel positions on any headend in which BTV is carried in the 35 most-populous Designated Market Areas ("DMAs").

II. THE NEWS NEIGHBORHOODING CONDITION APPLIES TO EXISTING NEIGHBORHOODS

In its Answer, Comcast maintains that the news neighborhooding condition applies only to neighborhoods created after consummation of the Comcast-NBCU merger.[8] This position, however, runs directly counter to the plain meaning of the condition, which makes clear that it also applies to any news neighborhood that existed on the date the FCC Order was adopted.

A. The Text of the Condition Indicates That It Applies to Existing Neighborhoods

By its terms, the news neighborhooding condition applies if "Comcast *now or in the future* carries news and/or business news channels in a neighborhood."[9] Comcast does not dispute that the word "now" means "at the present time or moment."[10] Therefore, the condition applies to those news neighborhoods that existed at the time that the FCC Order was adopted – "now" – as

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[7] *See* FCC Order at 4381 (App. A, Sec. XX).

[8] *See* Answer, ¶ 88.

[9] FCC Order at 4358 (App. 5, Sec.III.2)(emphasis added).

[10] Merriam Webster's Collegiate Dictionary, 10th Edition (1995), at 795-96. *See FDIC v. Meyer*, 510 U.S. 471, 476 (1994) ("[W]e construe a statutory term in accordance with its ordinary or natural meaning."); *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995); *Commissioner v. Soliman*, 506 U.S. 168, 174 (1993).

well as those that Comcast may create after that date – "in the future." *See J.D. v. Nagin*, 255 F.R.D. 406, 417 n.9 (E.D. La. 2009) (in the description of a certified class, interpreting "now or in the future" to refer both to children who were being detained at a facility when the complaint was filed as well as those who subsequently would be detained at that facility).

Comcast struggles mightily to reconcile its interpretation of the news neighborhooding condition with the phrase "now or in the future." First, it suggests that the word "now" should be read to refer to the sixteen-channel news groupings that Comcast has introduced on an experimental basis in Indiana ("the MCLU").[11] But if Comcast is admitting that the news neighborhooding condition applies to its Indiana trials, which were created *before* the FCC Order was adopted, then Comcast has already *conceded* that the news neighborhooding condition applies to some existing news neighborhoods and is instead quibbling over how large a channel grouping must be before it qualifies as a neighborhood, a question that is addressed in Section III of this Reply.

Alternatively, Comcast suggests that since it could have been expected to expand the Indiana trials in "the period that began on the date the Transaction closed,"[12] the term "now" in the news neighborhooding condition was intended to cover any such expansion. When the FCC Order was adopted, however, there was a term that the Commission included to describe the period beginning on the date that the Comcast-NBCU Merger would be completed, and that term was not "now"; rather, it was "the future."

Under Comcast's interpretation of the condition, the presence of the word "now" is entirely superfluous. The news neighborhooding condition would mean exactly the same thing had the Commission said that the condition applied only to neighborhoods that Comcast carries "in the future." Comcast's interpretation, therefore, runs afoul of a cardinal rule of statutory construction:

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[11] *See* Answer, ¶ 91.

[12] *Id.* at n.147.

a statute should be interpreted so that none of its terms are superfluous. *See, e.g.*, *Bailey v. United States*, 516 U.S. 137, 146 (1995) ("[W]e assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning."); *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991) (statutes should be interpreted "so as to avoid rendering superfluous any parts thereof"); *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883) (courts need to "give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any possible construction which implies that the legislature was ignorant of the meaning of the language it employed.").[13] For this reason alone, Comcast's position should be rejected.

Comcast points to two other pieces of language in the FCC Order to support its argument that the news neighborhooding condition applies only to neighborhoods created after consummation of the Comcast-NBCU Merger. Neither, however, comes close to being sufficient to transform the meaning of "now or in the future" to "in the future."

First, Comcast notes that the word "neighborhood" is defined in the news neighborhooding condition to mean "placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup."[14] Comcast then contends that the word "placing" "plainly refers to an affirmative act or movement" and that the Commission's use of that term, therefore, means that the condition "was intended to be triggered

[13] Moreover, the Commission has often employed this canon of construction. *See* In re Providing Eligible Entities Access to Aggregate Form 477 Data; Implementation of the Broadband Data Improvement Act of 2008; A National Broadband Plan for our Future, *Order*, 25 FCC Rcd 5059, 5064 (2010); In re Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, *Order on Remand*, 16 FCC Rcd 9751, 9761-62 (2001); In re Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues; Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals; *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598, 2620-21 (2001); In re Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, *Further Notice of Proposed Rulemaking*, 84 FCC 2d 445, 482 (1980).

[14] *See* Answer, ¶ 90 (emphasis omitted).

only if Comcast took affirmative steps to create a news neighborhood after the Transaction closed."[15] The word "placing," however, is used in the condition's definition of neighborhood, and not the condition's trigger. The verb used in the condition's trigger clause is "carries," which clearly does not require any affirmative movement of channels.

Moreover, while a neighborhood certainly results from "placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup," this definition does not specify when the relevant "placing" must have occurred. In the case of an existing news neighborhood, it occurred in the past. With respect to a news neighborhood that has not yet been created, it will occur in the future. In short, the trigger clause's "now or in the future" language, rather than the definitional term "placing," contains the temporal element of the condition.

Second, Comcast highlights footnote 295 of the FCC Order, which stated that the news neighborhooding 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."[16] Comcast then contends that "[t]he Commission's use of the language 'would only take effect if' and 'undertook' leaves no doubt that an affirmative action act of relocation is required to trigger the Condition."[17] Comcast, however, reads far too much into this footnote.

In this passage, the Commission was responding to (and rejecting) Comcast's argument that the Commission should not adopt *any* neighborhooding condition because "evolving interactive guides and navigation features have the potential to make neighborhooding less important in the

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[15] *Id.*, ¶ 91.

[16] FCC Order at 4288, n.295.

[17] Answer, ¶ 92.

future."[18] The Commission was making the point that the condition would apply only if Comcast were engaging in neighborhooding and that Comcast would not be engaging in neighborhooding unless there was some value in doing so.[19] The Commission was not purporting to specify in that footnote the neighborhoods to which the news neighborhooding condition would apply.

The footnote, moreover, does not imply that the condition would apply only to neighborhoods created in the future. At most, the use of the phrase "would only take effect if" indicates that the Commission was not addressing the question of whether and to what extent Comcast currently engages in neighborhooding (or would continue to utilize neighborhoods in the future). Neither does the Commission's use of the word "undertook" aid Comcast's case. "Undertook" could refer to past actions taken to create news neighborhoods or actions to be taken in the future. Indeed, the Commission's use of "undertook" (the past tense) rather than "undertakes" suggests that it was intended to refer, at least in part, to actions that Comcast had already taken to group news channels together.

In any event, the language of the condition itself ("now or in the future") clearly applies to news neighborhoods that existed on the date of the FCC Order or would exist any time in the future, and this meaning is not altered by a footnote that is ambiguous at best. *See, e.g.*, *Steamfitters Local Union v. Phillip Morris*, 171 F.3d 912, 924 n.5 (3d Cir. 1999) ("[W]e do not think a sentence fragment in a single quotation in a Supreme Court footnote is sufficient to override the clear text of that opinion."); *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1362 (D.C. Cir. 1993) (rejecting argument that an ambiguous sentence in a footnote of an FCC Order trumped the FCC's rule or the text of that order). To paraphrase the D.C. Circuit, the relevant sentence in footnote 295 is "far too

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[18] FCC Order at 4288, n.295.

[19] The available evidence, as shown herein and in the Complaint, demonstrates that Comcast not only engages in neighborhooding with respect to news programming, but certainly with respect to sports programming as well. *See*, Ex. A, ¶ 57.

slim a reed to bear the weight [Comcast] hoists upon it." *McElroy*, 990 F.2d at 1361. Had the Commission intended for the news neighborhooding condition to apply only to neighborhoods created in the future, it would not have used language saying the opposite in the condition itself and hidden this important limitation in a footnote addressing the relevance of search capabilities. *Cf. Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001) (observing that Congress "does not . . . hide elephants in mouseholes").

B. Interpreting the News Neighborhooding Condition to Cover Existing Neighborhoods is Consistent With Commission Policy and the Record before the Commission

The Commission does not need to go any further to decide that the condition covers existing news neighborhoods because the news neighborhooding condition expressly applies to neighborhoods that Comcast carries "now or in the future." *See, e.g.*, *Checkosky v. SEC*, 23 F.3d 452, 489 (D.C. Cir. 1994) ("It is fundamental that [agency] opinions, like judicial opinions, speak for themselves."); *PLMRS Narrowband Corp. v. FCC*, 182 F.3d 995, 1001-02 (D.C. Cir. 1999) ("Rendered at the conclusion of all the agency's processes and deliberations, [agency opinions] represent the agency's final considered judgment upon matters of policy the Congress has entrusted to it."); *see also Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[I]n interpreting a statute, a court should always turn first to one cardinal canon before all others. . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. . . . When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete'").

Even if the Commission chooses to go beyond the text of the FCC Order, however, Comcast's arguments for dramatically limiting the application of the news neighborhooding condition are not persuasive. Comcast, for example, maintains that interpreting the condition to apply to existing neighborhoods runs afoul of the Commission's policy to impose conditions only to

address transaction-specific harms.[20] But the news neighborhooding condition, when properly interpreted to apply to existing news neighborhoods, does remedy a transaction-specific harm. During the merger proceeding, Bloomberg argued that absent the transaction, Comcast would begin to move BTV to be near CNBC (and thus into existing news neighborhoods) on its channel lineups. Now, because of Comcast's ownership of CNBC, it does not have the same incentive to do so and, indeed, has a competitive incentive to place BTV as far as possible from CNBC.[21] As a result, interpreting the condition to apply to existing channel lineups ameliorates a transaction-specific harm by requiring Comcast to do what it likely would have done absent its merger with NBCU.

Indeed, Comcast's argument rests on the erroneous premise that requiring it to make changes to its existing channel lineups cannot remedy a transaction-specific harm.[22] Consider, for example, the condition that requires Comcast to add "ten new independently owned-and-operated channels" to its systems within eight years.[23] That condition plainly requires Comcast to alter its existing channel lineups by adding ten new networks. As a result, under the theory presented by Comcast, the Commission could not have imposed this condition since "passively continuing the *status quo* arrangement of channels," cannot result in a transaction-specific harm.[24] Yet, the independent programming condition, like the news neighborhooding condition, is designed to address a transaction-specific harm. Due to the Comcast-NBCU merger, Comcast now has less incentive to add independent programmers' channels to its lineups. Therefore, the Commission accounted for the merger's likely impact on Comcast's future programming decisions by requiring it

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[20] *See* Answer, ¶¶ 93-95.

[21] Bloomberg, L.P.'s Petition to Deny, In re Comcast Corp., General Electric Co., and NBC Universal, Inc., For Consent to Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56, at 29-30 (Erratum filed June 24, 2010) ("Bloomberg Petition to Deny").

[22] *See* Answer, ¶ 95.

[23] *See* FCC Order at 4358 (App. A, Sec. III.3).

[24] Answer, ¶ 95.

to add ten new independent channels. The same is true here. The Commission accounted for the merger's likely impact on Comcast's channel placement decisions by requiring Comcast to move BTV and other independent news channels into existing news neighborhoods because the merger reduced Comcast's incentive to move independent news channels to be near CNBC and other news channels. Absent the Comcast-NBCU merger, Bloomberg would not be discussing neighborhooding issues before the Commission.

Although an anti-discrimination condition can be effective at policing active discrimination (*e.g.*, dropping an unaffiliated channel), it is far more difficult for such a condition to forestall anti-competitive conduct that occurs by omission (*e.g.*, the independent channel that is not added because of a merger or the independent news channel that is not moved to be next to a competing affiliated channel because of a transaction). Therefore, in addition to including an anti-discrimination condition in the FCC Order, the Commission also required Comcast to alter its existing channel lineups in the independent programming and news neighborhooding conditions to remedy such likely transaction-specific harms.

Comcast also alleges that Bloomberg's current stance that the news neighborhooding condition applies to existing neighborhoods contradicts its advocacy during the merger proceeding.[25] Bloomberg's past and present positions plainly do not conflict. In its Petition to Deny and subsequent filings, Bloomberg asked the Commission to require that Comcast place all business news channels next to CNBC wherever CNBC was carried.[26] At most, Bloomberg's request implied that Comcast was not carrying BTV and other business news channels next to CNBC, a fact that Comcast does not claim is inaccurate. Bloomberg's argument did not imply that Comcast was not

[25] *See id.*, ¶ 96.

[26] *See, e.g.*, Bloomberg Petition to Deny at Exhibit 2, at 1.

carrying CNBC in news neighborhoods.[27] Simply put, there is no logical inconsistency between noting that Comcast does not carry *business news* channels next to CNBC and maintaining that Comcast is carrying CNBC in neighborhoods with *other* news channels (*e.g.*, CNN, Fox News, HLN, MSNBC, etc.) Neither could Bloomberg's pre-merger argument have addressed whether a yet-to-be-written condition would apply to existing news neighborhoods.

Finally, Comcast contends that, to the extent there is any doubt as to whether the news neighborhooding condition applies to existing neighborhoods, the condition should be interpreted against Bloomberg because Bloomberg was the primary author of the Condition.[28] This argument is frivolous. To begin with, the news neighborhooding condition was not drafted by Bloomberg; it was written by the Commission. Comcast cannot contend, on the one hand, that there are critical differences between Bloomberg's suggested language and the language ultimately adopted by the Commission,[29] and argue, on the other hand, that any doubt should be resolved against Bloomberg because it is the author of the provision. Even more fundamentally, the maxim that a document should be construed against the author applies in contract cases, and this case does not involve a contract. The FCC Order is not an agreement to which Bloomberg is a party. Comcast does not cite a single case where this maxim has been applied in a case interpreting an agency order.[30]

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[27] To the extent that Comcast is arguing in Section III.C of its Answer that Bloomberg's advocacy before the Commission somehow implied that the channel groupings identified in the Complaint are too small to be considered neighborhoods, that argument will be addressed in Section III.C below.

[28] *See* Answer, ¶ 97.

[29] *See id.*

[30] The cases cited by Comcast are inapposite to the facts in this case. In *United States* v. *Seckinger,* 397 U.S. 203 (1970), the issue was the interpretation of a contract in which the government itself was the party. *Id.* at 210. *InterPetrol Bermuda Ltd.* v. *Kaiser Aluminum Int'l Corp.,* 719 F.2d 992 (9th Cir. 1983), involved a dispute between private parties regarding the interpretation of a contract. *Id.* at 994-95. By contrast, although Bloomberg – like Comcast – advocated certain positions before the agency, it is the Commission itself – not a negotiation between private parties --that ultimately

Therefore, applying the maxim here makes no sense. Agencies, not private parties, author and vote to adopt agency orders.

III. COMCAST CARRIES HUNDREDS OF NEWS NEIGHBORHOODS THAT DO NOT INCLUDE BTV

Turning to the second disputed issue in this proceeding, Bloomberg identified in its Complaint 368 Comcast headends in the 35 most populous DMAs where BTV is carried but there is a news neighborhood that does not include BTV.[31] Although Comcast contends in its Answer that the channel groupings listed by Bloomberg do not constitute neighborhoods, Comcast's definition of neighborhood is clearly inconsistent with the definition set forth in the news neighborhooding condition adopted by the Commission. When the correct definition of the term is applied, all of the channel groupings identified by Bloomberg qualify as news neighborhoods.

A. The Neighborhoods Identified By Bloomberg Contain a "Significant Number or Percentage of News Channels"

In the FCC Order, the Commission defined a neighborhood to be "a significant number or percentage of news and/or business news channels" that are placed "substantially adjacent to one another in a system's channel lineup."[32] Bloomberg, in its Complaint, explained why any grouping of at least four news channels located in a block of five adjacent channel positions constitutes a neighborhood pursuant to this definition.[33] In its Answer, Comcast proposes a radically different definition of neighborhood. According to Comcast, a channel grouping should qualify as a news neighborhood only if it contains at least ten news channels and includes more than 70 percent of the

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determined the content of the FCC Order. In short, the only "drafting" party here is the Commission.

[31] *See* Complaint, ¶ 60, Ex. G.

[32] FCC Order at 4358 (App. A, Sec. III.2); *see also id.* at 4287, ¶ 122.

[33] *See* Complaint, ¶¶ 75-78.

news channels on a given headend.[34] Such a definition, however, is wholly inapposite given both the plain meaning of the condition and the purpose of neighborhooding.

1. The Neighborhoods Identified by Bloomberg Have a Significant Number of News Channels

As set forth in the Complaint, the word "significant" means "probably caused by something other than mere chance."[35] In the Complaint, Bloomberg explained that the probability that a grouping of at least four news channels within a block of five adjacent channel positions would occur randomly on a single Comcast headend is only between 0.9-1.2%.[36] Moreover, the probability that such channel groupings would occur by chance with the frequency at which they are found on Comcast headends (at least 418 of the 485 headends that carry BTV in the 35 most-populous DMAs) is so infinitesimal that it cannot be calculated with precision by a computer; it is approximately 10 to the negative seven hundredth power (or a decimal point followed by 699 zeros and then a "1").[37]

In its Answer, Comcast does not dispute the accuracy of these figures. Nor does it offer any hypothesis for why these groupings of news channels exist to serve as an alternative to the obvious explanation: these news neighborhoods resulted from deliberate decisions to place channels of the same genre together. Rather, Comcast simply maintains that the Commission did not have this definition of significant "in mind" when it adopted the condition.[38] Given, however, that the word "significant" is used in the definition of the word "neighborhood," and a neighborhood, at its core, is a group of channels organized by genre, a definition of "significant" that distinguishes an effort to

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[34] *See* Answer, ¶¶ 41-42, 70.

[35] *See* Complaint, ¶ 75.

[36] *See id.*

[37] *See id.*

[38] *See* Answer, ¶ 50.

group news channels together (by genre) from the random placement of such channels is precisely the most logical definition for this use of "significant" and is the definition most consistent with the purpose of the news neighborhooding condition. As industry executive Susan Arnold explains, "the touchstone for clustering or neighborhooding is whether the operator is intentionally placing channels of a similar genre near each other in an effort to increase overall viewership." Ex. F, ¶ 16.

Even if, however, the Commission chooses to look instead to other definitions of "significant" for guidance, the channel groupings identified by Bloomberg would still contain a "significant number" of news channels. Comcast, for example, alleges that Bloomberg "disregard[ed]" the definitions of significant as "having meaning" and "important."[39] In its Complaint, however, Bloomberg specifically cited to similar definitions of "significant" and explained how they bolstered Bloomberg's position that the channel groupings identified by Bloomberg contain a "significant number or percentage" of news channels. *See* Complaint at n.43 (quoting definition of "significant" as "having or likely to have influence or effect; important"), *id.*, ¶ 75 (quoting definition of "significant" as "of a noticeably or measurably large amount").

A grouping of at least four news channels in any five channel positions is important because it is large enough to attract viewers in search of news programming. *See* Ex. B, ¶ 9; Ex. C, ¶ 14; Ex. F, ¶ 16. Indeed, the same is true with respect to neighborhoods of other programming genres. A grouping of at least four sports channels in any block of five channel positions will attract those in search of sports programming, and a grouping of at least four channels aimed at children in any block of five channel positions will attract those in search of kids programming. *See* Ex. C, ¶ 18; Ex. F, ¶ 17. Indeed, Professor Donald Ferguson reports that a "grouping of four or five channels of the same genre together in a lineup is not only a neighborhood but such an effective cluster that it makes it less likely that customers will look for other similar genre programming." *See* Ex. D, ¶ 21.

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[39] *See id.*, ¶ 51.

Moreover, in addition to having a quantitative aspect, the meaning of "significant" can have a qualitative aspect as well. For example, the five news channels most commonly carried in the 368 channel groupings identified by Bloomberg in its Complaint are Headline News ("HLN"), CNBC, CNN, Fox News, and MSNBC. Indeed, leaving aside MSNBC, each of these news channels is located in over 93% of these neighborhoods.[40] This is important because these five news channels are the five most-watched news channels in the United States.[41] Moreover, in 2010, according to SNL Kagan data, these five cable news channels accounted for over {{[redacted]}} of all national cable news channels' revenues in the United States.[42] Consequently, it strains credulity to say that the neighborhoods identified by Bloomberg containing these channels do not "have meaning" or are not "important." These channel groupings are where subscribers are most likely to turn in order to view news programming, and that is why they are easily recognizable to those within the industry as neighborhoods. As industry expert James Trautman explains, "the presence of these 'anchor networks' increases both the importance of the groupings from the perspective of subscribers and, correspondingly, increases the groupings' effectiveness in serving the purpose of a news neighborhood."[43]

Comcast maintains that the Commission should assess the importance of a channel grouping, "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

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[40] *See* Complaint, ¶ 77.

[41] *See id.*, Ex. E, ¶ 6.

[42] Specifically, SNL Kagan estimates that the combined 2010 net operating revenue of Fox News, CNN, HLN, CNBC, and MSNBC was approximately {{[redacted]}} while the combined net operating revenue that same year of those five networks plus Fox Business, BTV, CNBC World, and the C-SPAN networks was approximately {{[redacted]}}. *See* SNL Kagan: Briefing Books: Network Economics (Entries for Fox News, CNN/HLN, CNBC, MSNBC, Bloomberg TV, Fox Business Network, C-SPAN, and CNBC World).

[43] Ex. B, ¶ 10; *see also id.*, ¶ 17; Ex. C, ¶ 17; Ex. D, ¶ 19; Ex. E, ¶¶ 17-18; Ex. F, ¶¶ 18-19.

the system."[44] Comcast, however, provides no basis for such a definition and no evidence of how many (or which) news channels must be included in a grouping before a viewer will assume that other news channels are not located elsewhere on the system. Moreover, to the extent that a viewer finds the four or five most widely known cable news channels in one place, he or she may very well not think to look for other news channels. *See* Ex. B, ¶ 18. As Professor Donald Ferguson explains, if viewers flipping channels encounter "four or five news channels, followed by the Disney Channel and Nickelodeon, then the same viewers cannot be blamed for thinking they are done with news channels." Ex. D, ¶ 15. Thus, even under such a restrictive definition, the channel groupings identified by Bloomberg are likely neighborhoods.

Even more fundamentally, however, Comcast's proposed standard is far too restrictive for accurately evaluating the importance of a channel grouping. Channels do not benefit from being located near others of the same genre only because a customer may reach the erroneous conclusion that there are not *any* other channels of that genre located outside of the neighborhood. Rather, because viewers use their remote controls to "flip" between channels as well as to pull up electronic programming guides that organize listings by channel number and automatically focus on the channel being viewed,[45] channels benefit simply from being located in close proximity to other channels of the same genre.[46] *See* Ex. B, ¶ 18; Ex. C, ¶¶ 14, 15; Ex. F, ¶¶ 13, 15. For example, a viewer watching a news channel at channel 40 will be far more likely to discover news programming on channel 41 than similar news programming on channel 135. While such a viewer may know in the abstract that there are other news channels located far from channel 40, he or she will be less likely to watch them if he or she does not encounter them while flipping channels or using the

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[44] Answer, ¶ 53.

[45] *See* Ex. E, ¶ 19.

[46] According to research, male viewers are more likely to find programming by flipping channels while female viewers are more likely to use guides. *See* Ex. D, ¶ 22.

electronic programming guide. Indeed, industry executive Susan Arnold explains that "news channels benefit even more from neighborhooding than do other genres because . . . 'news aficionados' tend to flip between news networks more frequently than do viewers of movie, drama, sports, or other long-form programming." Ex. F, ¶ 17. Industry expert David Goodfriend notes that for this reason "during a breaking news story, channels not included in [a news] neighborhood are at a significant disadvantage, as they are much less likely to be found [by viewers]." Ex. C, ¶ 14.

In sum, the channel groupings identified by Bloomberg in its Complaint have a "significant number" of news channels for three independent reasons. First, they clearly result from deliberate decisions to organize news channels by genre. Second, they contain a sufficient number of news channels to be important to viewers in search of news programming. And third, they contain those news channels to which viewers are most likely to turn when they want to view news programming.

2. The Neighborhoods Identified by Bloomberg Have a Significant Percentage of News Channels

Because the 368 channel groupings identified by Bloomberg in its Complaint contain a significant number of news channels, the Commission need not go any further to find that they qualify as news neighborhoods under the definition set forth in the condition. These channel groupings, however, also meet the Commission's definition of a neighborhood because they contain a significant percentage of news channels.

In its Complaint, Bloomberg explained that these channel groupings, on average, contain almost half (46.2 percent) of the standard definition ("SD") news channels carried on these headends.[47] Moreover, Bloomberg stated that 362 of these 368 channel groupings (or 98.4%) contain one-third or more of standard definition news channels.[48] Neighborhoods containing at least one-third of the news channels on a headend are important because they will serve as a

[47] *See* Complaint, ¶ 65.

[48] *See id.*, ¶ 76.

destination for viewers seeking news programming. *See* Ex. C, ¶ 20. Further, these neighborhoods are especially important when they contain the most widely viewed news channels (as the channel groupings identified by Bloomberg do). *See* Ex. B, ¶¶ 10, 17; Ex. F, ¶ 19.

Notwithstanding Comcast's contention that a channel grouping must contain at least seventy percent of news channels to contain a "significant percentage" of such channels, it is well established that the term "significant percentage" is not synonymous with the term "majority." *See, e.g.*, *Aronson v. U.S. Dep't of Hous. & Urban Dev.*, 822 F.2d 182, 186 (1st Cir. 1987) ("There is no showing in the record that the practice of keeping one's address out of reach of the postman is that of *a majority or even of a significant percentage* of the citizenry.") (emphasis added); *HNRC Dissolution Co., f/k/a Horizon Natural Resources Co. v. Kinder Morgan Operating L.P. "B"*, 2005 B.R. LEXIS 2418, *10 (Bankr. E.D. Ky. 2005) ("The transfers need not be consistent with *a majority or even a significant percentage* of the industry's transactions.") (emphasis added); *N.Y.C. Managerial Emps. Ass'n v. Dinkins*, 807 F. Supp. 958, 969 (S.D.N.Y. 1992) ("Plaintiffs have, however, carefully couched the language of their Memorandum and accompanying affidavits to avoid stating that *a majority – or even a significant percentage* – of non-managers have managerial-type duties and responsibilities.") (emphasis added); *State v. Garcia*, 658 A.2d 947, 953 (Conn. 1995) ("*[A]lthough most people* who receive forced medication are appreciative when they are helped by the treatment, *there is a significant percentage* of other patients who resent the intrusiveness, the side effects and the humiliation of forced medication.") (emphasis added); *People v. Terneus*, 607 N.E.2d 568, 573 (Ill. App. Ct. 1992) ("The appellate court decides *a significant percentage (and probably a majority)* of criminal cases in Rule 23 orders, particularly when the defendant claims on appeal that he received an excessive sentence.") (emphasis added). Rather, the term "significant percentage" is generally used to refer to something distinct from, and less than, a "majority" or "most".

The phrase "significant percentage" is most often used to refer to percentages in the range of twenty-five to forty-nine percent. *See, e.g.*, *Brio Corp. v. Meccano S.N.*, 690 F. Supp. 2d 731, 750 (E.D. Wis. 2010) (referring to 37.7% as a "significant percentage"); *Marsden v. Select Medical Corp.*, 2006 U.S. Dist. LEXIS 16795, *4 (E.D. Pa. 2006) (referring to 37.3%, 40.3%, and 46% as "significant percentage[s]"); *Am. Soc'y of Consultant Pharmacists v. Garner*, 180 F. Supp. 2d 953, 966 n.16 (N.D. Ill. 2001) (referring to approximately 28% as a "significant percentage"); *In re Cendant Corp. Secs. Litig.*, 109 F. Supp. 2d 235, 263 (D.N.J. 2000) (referring to approximately 25-30% as a "significant percentage"); *Greenpeace v. Nat'l Marine Fisheries Serv.*, 106 F. Supp. 2d 1066, 1076 (W.D. Wash. 2000) (referring to 36% as a "significant percentage"); *Vidal v. Head*, 134 B.R. 114, 117 (Bankr. D.N.M. 1999) (referring to 37.93% as a "significant percentage"); *Grais v. City of Chicago*, 601 N.E.2d 745, 755 (Ill. 1992) (finding 34% to be a "significant percentage"); *Evans v. Grand Union Co.*, 759 F. Supp. 818, 824 (M.D. Ga. 1990) (referring to 43% as a "significant percentage"); *Clifford v. M/V Islander*, 751 F.2d 1, 8 n.3 (1st Cir. 1984) (referring to 40% as "very significant percentage"); *Hoffman v. United Telecomms., Inc.*, 575 F. Supp. 1463, 1480 (D. Kan. 1983) (referring to 33% and 25% as "significant percentage[s]"); *Twenty-Eight (28) Members of Oil, Chem. & Atomic Workers Union, Local # 1-1978. v. Emp't Sec. Div. of Alaska Dep't of Labor*, 659 P.2d 583, 592 (Alaska 1983) (referring to about 20% to 30% as a "significant percentage"); *Battelstein Inv. Co. v. U.S.*, 302 F. Supp. 320, 329 n.20 (S.D. Tex. 1969) (referring to approximately 35% as a "significant percentage"); *cf. Doe v. Hillsboro Indep. Sch. Dist.*, 81 F.3d 1395, 1403 (5th Cir. 1996) (referring to one-third as a "significant fraction").

Comcast, by contrast, cites to no precedent restricting the meaning of the phrase "significant percentage" only to percentages of seventy and above. Indeed, such a definition is far more applicable to the phrases "significant majority" or "substantial majority" than the phrase "significant percentage." *See, e.g.*, W. Va. Code § 48-9-403(d)(1) (defining "significant majority" to be "seventy

percent or more"); *Turner v. Turner*, 2009 Alas. LEXIS 11 (Alaska 2009) at *21 (referring to 80% as a "significant majority"); *Mihailovich v. Laatsch*, 359 F.3d 892, 909-10 (7th Cir. 2004) (referring to at least 75% as a "substantial majority").

3. Comcast Vastly Overstates the Number of News Channels on Its Headends

In an attempt to minimize the percentage of news channels carried in the neighborhoods identified by Bloomberg, Comcast vastly overstates the number of news channels that are carried on its headends.

High-Definition ("HD") feeds – Comcast criticizes Bloomberg for excluding HD feeds from its analysis.[49] HD feeds, however, largely replicate the content of standard definition news channels,[50] and Comcast does not point to any headends where it carries a news channel's HD feed, but not that channel's standard definition feed. Moreover, because Comcast does not widely carry BTV's HD feed, Bloomberg currently has not requested that BTV be carried in any HD news neighborhood.[51]

Critically, Comcast's own experts fail to provide support for including the HD feeds of news channels when calculating the percentage of news channels carried in a neighborhood. Michael Egan and Mark Israel did not include HD feeds in their analysis of the percentage of news channels located in various MVPDs' channel groupings.[52] In fact, Dr. Israel reported that he found "*no*

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[49] *See* Answer, ¶ 48.

[50] *See* Complaint, Ex. F, ¶ 28.

[51] *See* Answer at n.71. Bloomberg reserves the right to seek relief under the news neighborhooding condition as it would apply to the HD feed of BTV in any HD news neighborhood.

[52] *See id.*, Ex. 4, Attachment A, at 2; *id.* at Ex. 5, ¶ 16.

instances in the data in which HD channels show up within SD news channel groupings."[53] *See also* Ex. B, ¶¶ 21, 23; Ex. C, ¶ 26.

Sports – Comcast briefly suggests that "sports news channels" should be counted as news channels.[54] However, the only such channel that is identified anywhere in Comcast's submission is ESPNews,[55] and that network's programming clearly is not focused on "public affairs, business, or local news reporting or analysis during the hours from 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone."[56] Rather, it is focused on sports.

ESPNews is a sports channel, not a news channel, *see* Ex. C, ¶ 27; Ex. F, ¶ 22, and that is why MVPDs do not place it by news channels. Rather, they generally place it with other sports channels. *See* Ex. B, ¶ 24. Indeed, Comcast's own expert Dr. Egan is unwilling to take the position that "sports news channels" are news channels, and he did not include ESPNews as a news channel in his analysis of MVPDs' channel groupings.[57] Rather, he only offers that "one might argue that a sports news network such as ESPNews should be considered a news channel."[58] To be sure, "one might argue" a whole host of things; but if Comcast's own expert is unwilling to endorse counting "sports news channels" as "news channels," neither should the Commission.

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[53] *Id.* at Ex. 5, n.15 (emphasis added). As a result, were the Commission to count HD feeds and accept Comcast's definition of a neighborhood as including at least seventy percent of news channels on a headend, it would be impossible for any grouping of news channels to count as a neighborhood so long as about half of news networks were carried in both SD and HD. For example, if a headend were to contain six SD news channels on adjacent channel positions and then HD feeds of three of those channels were grouped together elsewhere, the SD neighborhood would only contain sixty-six percent of news channels if SD feeds and largely repetitive HD feeds of the same channel were counted. Such an outcome would be wholly illogical and could not have been the Commission's intent.

[54] *See* Answer, ¶ 40.

[55] *See id.*, Ex. 4, Attachment A, at 3.

[56] *See* FCC Order at 4288, n.292.

[57] *See* Answer, Ex. 4, Attachment A, at 3.

[58] *Id.*

Foreign Language – Comcast also suggests in passing that "foreign-language news channels" should have been included in Bloomberg's analysis of news groupings.[59] But as Professor Gregory S. Crawford previously explained, "Spanish-language and other foreign-language news channels . . . are typically located in Spanish-language and/or foreign-language neighborhoods rather than with English-language channels (including English-language news channels). . . ."[60] Moreover, Professor Crawford pointed out that foreign-language news channels are "identified by Comcast as 'Multicultural' programming in their channel lineups" rather than news programming, a characterization that Comcast does not even attempt to disavow.[61]

Professor Crawford's position is bolstered by the views of Comcast's own experts. Mr. Egan and Dr. Israel did not include "foreign-language news channels" in their analyses of the percentage of news channels located in various MVPDs' channel groupings.[62] Mr. Egan explained that he omitted such channels from his analysis 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 operated by Cablevision, DirecTV, DISH, AT&T, Verizon, and Comcast."[63] Industry executive Susan Arnold also explains that when she wanted to sell advertising on news channels, she "would not include foreign language news services because those services address a completely different market segment than, say, CNBC, CNN, Fox News or MSNBC." Ex. F, ¶ 23. *See also* Ex. B, ¶ 22; Ex. C, ¶ 28.

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[59] *See id.*, ¶ 40.

[60] Complaint, Ex. F, ¶ 28.

[61] *Id.*

[62] *See* Answer, Ex. 4, Attachment A, at 2; *id.* at Ex.5, ¶ 16. It appears that Mr. Egan and Dr. Israel did include one Spanish-language multicast stream in their analysis – WNVTDT8. *See* Ex. C, ¶ 34. Bloomberg assumes that this was an inadvertent error.

[63] *Id.*, Ex. 4, Attachment A, at 2-3.

Public, Educational, and Government ("PEG") – In its analysis of news channels carried by Comcast headends located in the 35 most populous DMAs, Comcast counts sixty-six PEG channels as news channels.[64] Nine of these channels are labeled "Public, Educational, Government," and fifty-seven are labeled "Government Access."[65] Comcast curiously neglects to mention these channels in the text of its Answer, perhaps aware of the weakness of its claim. Moreover, in contrast to Mr. Egan's specific discussion of many types of channels, such as weather channels and multicast feeds, Mr. Egan provides no specific justification for his categorization of PEG channels as news channels.

Put simply, PEG channels are not considered to be news channels by those within the MVPD industry. *See* Ex. B, ¶ 20; Ex. C, ¶ 29. Neither are they referred to as news channels in common parlance. Furthermore, their programming generally does not focus on "public affairs, business, or local news reporting and analysis during the hours of 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone." In particular, government access channels generally do not provide much, if any, reporting or analysis, which is a necessary prerequisite under the aforementioned definition.[66] *See* Ex. C, ¶ 29. Comcast provides no evidence that any of the specific PEG or government access channels it counts as news channels provide a substantial amount of reporting or analysis. For all of these reasons, PEG channels should not be counted as news channels for purposes of analyzing the percentage of news channels found in the groupings of news channels identified by Bloomberg.

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[64] *See* Answer, Ex. 5 Appendix A.

[65] *See id.*

[66] In footnote 292 of the FCC Order, the phrase "reporting or analysis" clearly modifies "local news," "business," and "public affairs." For example, a channel about the history of business would not qualify as a news channel because its programming would not focus on business reporting and analysis. Similarly, a public affairs channel's programming must focus on public affairs reporting and analysis before it may be eligible to be considered a news channel for purposes of the news neighborhooding condition. *See* FCC Order at 4288, n.292.

Weather – Comcast objects to Bloomberg excluding weather channels from its analysis.[67] To be sure, weather, like sports, is a topic that is covered in local newscasts. However, just as a twenty-four hour sports channel is not a news channel, neither is a twenty-four hour weather channel. The Commission in the past has specifically placed "news programs," "weather and market reports," and "sports programs" in distinct categories. *See En Banc Programming Inquiry*, Report and Statement of Policy Res., 44 FCC 2303, 2314 (1960); *cf. In re Children's Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065, 11074 (2006) (separately referring to "twenty-four hour news channel" and "twenty-four hour weather channel"). Similarly, in promoting their newscasts, broadcast stations advertise that they feature "news, weather, and sports," *see* Ex. C, ¶ 30, thus reflecting the widespread recognition that weather and sports are not by themselves news; likewise, many broadcast stations similarly organize their websites to have separate pages for "news," "weather," and "sports."[68]

Turning specifically to The Weather Channel, it does not meet the definition of a news channel set forth in the FCC Order.[69] The Weather Channel's programming does not focus on public affairs reporting or analysis, business reporting or analysis, or local news reporting or analysis. While one might say that The Weather Channel offers reporting and analysis, its programming is not focused on public affairs, business, or news affecting a particular community. Moreover, The Weather Channel is not considered to be a news channel by those within the MVPD industry. Rather, it is thought of as a weather channel. *See* Ex. C, ¶ 30 (noting that The Weather Channel has an "audience of distinct interests and demographics from channels that everyone would agree are

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[67] *See* Answer, ¶¶ 44-46.

[68] *See, e.g.*, http://www.newsnet5.com/; http://www.ky3.com/; http://www.nbc12.com/; http://www.myfoxphilly.com/; http://www.nbcactionnews.com/; http://www.fox11online.com/; http://www.whotv.com/; http://www.wtvr.com/; http://www.fox6now.com/; http://www.wcsh6.com/.

[69] *See supra* note 66.

news channels"); Ex. F, ¶ 24 ("If CNBC were placed in the electronic programming guide next to three weather channels . . ., I would not say that CNBC was in a news neighborhood, but rather that CNBC was next to a weather neighborhood").

More so than even The Weather Channel, Weatherscan Local Network and other local twenty-four weather feeds do not meet the definition of news channel set forth in the news neighborhooding condition. While their programming focuses on a particular community, an exclusive focus on weather does not constitute a focus on local news for the reasons stated above. Furthermore, a channel that displays a radar screen and/or a text weather forecast twenty-four hours a day does not provide "reporting or analysis" regarding "local news" in any conventional sense. *See* Ex. C, ¶ 32. Indeed, such a channel is no more a "news channel" than a channel that displays in a continuous loop the scores of a city's professional baseball, football, basketball, and hockey teams twenty-four hours a day. For all of these reasons, local weather channels are not considered to be news channels by those within the MVPD industry. *See* Ex. B, ¶ 25; Ex. C, ¶ 32.

Multicast Streams – Comcast criticizes Bloomberg for excluding from its analysis "broadcast multicast channels that focus on news and public affairs."[70] Most of the specific multicast channels identified by Comcast, however, cannot reasonably be considered to be news channels. WNCNDT3, for example, carries paid programming from 6:00 a.m. to 11:00 a.m. and then sports programming for the rest of the day.[71] WNEODT2 devotes most of its airtime to arts programming.[72] WTVJDT2 similarly does not focus on news programming. Rather, on a typical day, from 6:00 a.m. to 10:00 a.m., 2:00 p.m. to 3:00 p.m., and 3:30 p.m. to 4:00 p.m. it carries shows such as "Nonstop Foodies Miami," that the station's own website designates as "entertainment."

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[70] *See* Answer, ¶ 47.

[71] http://www.2.nbc17.com/on_tv/tv_schedule/

[72] http://westernreservepublicmedia.org/schedule.htm

Moreover, it also airs "The Nate Berkus Show" from 10:00 a.m. to 11:00 a.m. and a real-estate show called "Open House" from 11:00 a.m. to 12:00 a.m.[73] KCRT Cable likewise does not focus on news programming. *See* Ex. F, ¶ 28. For example, on Thursday, August 25, 2011, the channel aired music videos from 7:00 a.m. to 7:30 a.m., a talk show with celebrities and music from 7:30 a.m. to 8:00 a.m., an on-air bulletin board with "public service announcements, job listings, a calendar of community events, and a schedule of [its] programming" from 8:00 a.m. to 9:00 a.m. and also from 2:05 p.m. to 3:00 p.m., a show exploring California's "nature and tourist attractions" from 9:30 a.m. to 10:00 a.m. and 3:30 p.m. to 4:00 p.m., and the movie "A Star is Born" from 12:00 p.m. to 2:05 p.m.[74]

Many of the multicast channels identified by Comcast carry public television's World Network. These channels, however, do not focus on public affairs, business, or local news reporting or analysis between 6:00 a.m. and 4:00 p.m. Rather, most of their programming during this time period consists of nature and outdoors programming, historical documentaries, and other non-news programming. *See* Ex. C, ¶ 34; Ex. F, ¶ 28. Moreover, they are not considered to be news channels by those within the MVPD industry. *See* Ex. C, ¶ 34; Ex. F, ¶¶ 27, 28.

Twenty-four of the multicast channels broadcast weather information. Most of these channels exclusively focus on local weather while others also contain some other programming (*e.g.*, children's programming, paid programming, traffic programming, etc.). Such channels are also not considered to be news channels by those within the MVPD industry, *see* Ex. C, ¶ 34, Ex. F, ¶ 28, and should not be considered news channels for the reasons set forth above pertaining to other local weather channels.

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[73] http://www.nbcmiami.com/on-air/tv-listings/tv-listings-mia.html

[74] http://www.kcrt.com/#tvg

Of the remaining 28 multicast streams identified by Comcast, 11 are locally-oriented multicast streams while 17 carry foreign owned-and-originated news programming.[75] It is unclear whether the Commission intended for such channels to count as news channels for the purpose of analyzing news neighborhoods.[76] In any event, these streams are not carried on many headends[77] and, as will be explained below, therefore do not significantly change the relevant statistics provided in the Complaint.

Current TV – While Comcast concedes that "Current TV is not a typical 'news channel,'" it nonetheless argues that Current TV currently "appears to meet the Commission's broad definition based on its public affairs programming."[78] However, most of Current TV's programming, including its content between 6:00 a.m. and 4:00 p.m., consists of documentaries exploring a wide variety of topics, not news reporting or analysis. While this programming may be interesting and worthwhile, the channel's focus is not on public affairs, business, or local news, and it is not considered to be a news channel by those in the MVPD industry.[79] See Ex. B, ¶ 26; Ex. F, ¶ 25.

Miscellaneous – Comcast also mistakenly counts a few other channels as "news channels."

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[75] These 28 multicast channels are identified in Attachment B to Professor Crawford's Declaration. *See* Ex. A, Attachment B.

[76] For example, the Commission has a long history of treating foreign-owned media differently. *See, e.g.,* 47 U.S.C. § 310(b) (restricting foreign ownership of broadcast media). In 1995, the Commission reaffirmed its restrictions on foreign control of broadcast licenses, agreeing that "the concern that misinformation and propaganda broadcast by alien-controlled licensees could overwhelm other media voices" was "real." In re Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order*, 11 FCC Rcd 3873, 3947 ¶ 194 (1995).

[77] Ex. A, ¶ 13.

[78] Answer at n.110.

[79] As the *Los Angeles Times* recently put it, "Current TV has a long way to go before it can call itself a news channel." Joe Flint, "Current TV Watching Comcast-Bloomberg Fight Closely," The Los Angeles Times (June 20, 2011) (available at http://latimesblogs.latimes.com/entertainmentnewsbuzz/2011/06/current-tv-watching-comcast-bloomberg-fight-closely.html).

- It claims that Comcast 100 is a news channel even though it airs paid programming for all but four hours between 6:00 a.m. and 4:00 p.m. *See* Ex. C, ¶ 34; Ex. F, ¶ 28.

- It maintains that Community Bulletin Board is a news channel even though it only appears to carry text promotions for non-profit organizations and listings of community events. *See* Ex. C, ¶ 34; Ex. F, ¶ 28.

- It contends that Tango Traffic is a news channel despite the fact that its programming is exclusively focused on traffic. *See* Ex. C, ¶ 34; Ex. F, ¶ 28.

- It claims that LINK TV is a news channel even though the network only characterizes a minority of its programming as "news and current affairs," and it carries movies and music programming. *See* Ex. C, ¶ 34; Ex. F, ¶ 28.

- It contends that the City of Houston Municipal Channel is a news channel even though it airs programs such as "America's Wildest Places," "the Grill Sergeants," and "You're the Chef" between 6:00 a.m. and 4:00 p.m. in the Eastern Time Zone. *See* Ex. C, ¶ 34; Ex. F, ¶ 28.

None of these channels focus on public affairs, business, or local news reporting or analysis between 6:00 a.m. and 4:00 p.m., and none are generally considered to be news channels by those in the MVPD industry. *See* Ex. C, ¶ 34; Ex. F., ¶ 28.

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When news channels are not over-counted,[80] there are 369 Comcast headends in the 35 most-populous DMAs that carry BTV and have a news neighborhood that does not include BTV.[81] Of these neighborhoods, 269 have five news channels; 46 have six; 46 have four; and 8 have seven

[80] As reviewed above, it is unclear whether the Commission intended for 28 multicast streams identified by Comcast to count as news channels for the purpose of analyzing news neighborhoods. Taking a conservative approach, Bloomberg has included them in the analysis above. This, however, should not be interpreted as a concession that these channels should be counted as news channels for present purposes.

[81] The total number of headends increases from 368 to 369 because one headend was added as a result of a correction made by Professor Crawford to the code he utilized to identify news neighborhoods. *See* Ex. A, n.3; Ex. H. There are two additional headends with a news neighborhood that does not include BTV, *see* Ex. A, ¶ 20(d), but Bloomberg is not requesting to be added to those neighborhoods because they do not contain any U.S. news channels.

or more.[82] On average, these neighborhoods contain almost half (44.9%) of the standard definition news channels carried on their headends, and 349 of these 369 neighborhoods contain 33% or more of these news channels.[83] As reviewed above, these neighborhoods plainly include "a significant percentage" of news channels.

Assuming arguendo the need to take a broader view of what constitutes a news channel, these neighborhoods would still constitute a "significant percentage" of news channels. For example, if The Weather Channel, which Comcast insists is a news channel, were to be considered as part of a news neighborhood, the number of Comcast headends in the 35 most-populous DMAs that carry BTV and have a news neighborhood that does not include BTV rises from 369 to 384.[84] These neighborhoods on average would carry 48.0% (rather than 44.9%) of the standard definition news channels carried on their headends, and 376 of these 384 neighborhoods would contain at least 33% of these news channels.[85] In other words, if The Weather Channel were included, the results would be more news neighborhoods – not fewer – that would need to include BTV. Indeed, even if the definition of news neighborhood were tightened under this scenario from a grouping of four news channels within any block of five adjacent channel positions to a grouping of five news channels within any block of six adjacent channel positions, there would still be 347 news neighborhoods that do not include BTV, most of which would include exactly six news channels.[86] Furthermore, these neighborhoods on average would carry 49.0% of the standard definition news

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[82] Ex. A, ¶ 21.

[83] *Id.*, ¶ 22(c).

[84] *Id.*, ¶ 24. Arguably, The Weather Channel has more indicia of a news channel than the weather radar and local forecast channels advocated by Comcast. It should be noted, too, that The Weather Channel is owned and controlled by Comcast.

[85] *Id.*, ¶ 25.

[86] *Id.*, ¶ 26.

channels carried on their headends.[87] In sum, the channel groupings identified by Bloomberg would still contain a "significant percentage" of news channels.

B. The Neighborhoods Identified by Bloomberg Are Consistent with Industry Practice

In determining whether the channel groupings identified by Bloomberg qualify as neighborhoods, Comcast maintains that the Commission should examine "the industry's general practices."[88] Comcast then contends that "[g]roupings 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."[89]

In advancing this argument, Comcast principally relies on the views of "industry expert" Michael Egan.[90] In his Declaration, however, Mr. Egan admits that he is not "aware of a generally-accepted definition of a news neighborhood among industry professionals."[91] However, even if such a generally-accepted definition were to exist, the Commission included a specific definition of neighborhood in the news neighborhooding condition, so it is that definition, rather than any other definition, which governs in this proceeding.

This distinction is critical because Mr. Egan's views as to what constitutes a neighborhood differ from the definition found in the news neighborhooding condition in two important ways. First, Mr. Egan's analysis focuses exclusively on the percentage of news channels located together.[92] Indeed, Mr. Egan believes that the definition of a neighborhood should depend entirely "on the percentage of news channels carried by the system that the neighborhood comprises" and criticizes

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[87] *Id.*

[88] *See, e.g.*, Answer, ¶ 55.

[89] *Id.*, ¶ 41.

[90] *See id.*

[91] *Id.*, Ex. 4, ¶ 11.

[92] *See, e.g.*, *id.*, Ex. 4, ¶¶ 19-22.

Bloomberg for its proposed definition for involving "a fixed number of channels."[93] The Commission, however, defined a neighborhood to exist whenever "a significant number *or* percentage" of news channels are carried substantially adjacent to one another in a system's channel lineup. While Mr. Egan may believe that the Commission should have substituted "significant number *and* percentage" for "significant number *or* percentage," Comcast must comply with the news neighborhooding condition that the Commission adopted, not the condition that Mr. Egan might have drafted, and the Commission's use of the disjunctive "or" instead of the conjunctive "and" is critical. *See, e.g.*, *Connecticut Mutual Life Ins. Co. v. Wyman*, 718 F.3d 63, 65 (3d Cir. 1983) ("We must assume that the Pennsylvania legislature knew the difference between 'or' and 'and,' and we conclude that the clear and explicit language of the statute must control unless Pennsylvania courts have indicated otherwise."); *Gordon v. Lewiston Hospital*, 2006 U.S. Dist. LEXIS 70938 (M.D. Pa. 2006) at *6 (rejecting the argument that a statute separating the terms "frivolous" and "in bad faith" with the disjunctive "or" established a "frivolous and bad faith" standard).

Second, Mr. Egan's perspective regarding the percentage of news channels that must be grouped together for a neighborhood to exist is inconsistent with the definition contained in the condition. After having "cherry picked" from the practices of certain other MVPDs, Mr. Egan suggests that a neighborhood must contain at least 70% of news channels. Similarly, at another point in his Declaration, he makes the following claim: "Common sense suggests the percentage [of news channels] must represent a *significant majority*, and a truly effective neighborhood might well require inclusion of two-thirds (66%) or more of the news channels."[94] But while Comcast and Mr. Egan may have wished that the Commission had defined a neighborhood to refer to a "significant majority" of news channels, that term is nowhere to be found in the condition. Rather, the

[93] *Id.*, ¶ 13.

[94] *Id.*, Ex. 4, ¶ 13 (emphasis added).

Commission instead used the term "significant percentage," which, as explained above, is generally accepted in law to refer to percentages less than a majority.[95]

Aside from being incompatible with the definition of neighborhood adopted by the Commission, Mr. Egan's views on what constitutes a news neighborhood are flawed for another reason as well: they are inconsistent with industry practice. In his Declaration, Mr. Egan identifies four MVPDs that he claims have set the "industry standard" for neighborhooding: DirecTV; Verizon; AT&T U-Verse; and Insight.[96] He notes that "[e]ach 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 neighborhood might well be at least 70%."[97]

Curiously, however, Mr. Egan fails to quantify news channel groupings carried by other cable operators that are similar to those carried by Comcast (and identified by Bloomberg). For example, on 97.7% of Cablevision headends that carry BTV and are located in the 35 most-populous DMAs, there are channel groupings located below channel 100 that contain four, five, or more news channels, and the vast majority of these neighborhoods (90.7%) include exactly four news channels.[98] Likewise, on 63.0% of Charter headends that carry BTV and are located in the 35 most-populous DMAs, there are channel groupings located below channel 100 that contain four, five, six, or more news channels, and the vast majority of these neighborhoods (86.9%) include exactly four or five news channels.[99] Furthermore, on 50% of Cox headends that carry BTV, there are channel groupings located below channel 100 that contain four or five news channels, and a

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[95] *See supra* Section III.A.2.

[96] *See* Answer, Ex. 4, ¶¶ 19, 22.

[97] *Id.*, ¶ 19.

[98] Ex. A, ¶ 42.

[99] *Id.*, ¶ 41.

substantial majority of these neighborhoods (72.2%) include exactly four news channels.[100] Moreover, the vast majority of these neighborhoods carried by Cablevision, Charter, and Cox include a similar percentage of news channels (one-third to one-half) as those the neighborhoods Bloomberg has identified on Comcast headends.[101]

Additionally, the type of neighborhood identified by Bloomberg is not limited to the news genre. Comcast, for example, has similar sports neighborhoods.[102] Specifically, on 75.7% of the headends that carry BTV in the 35 most populous DMAs, Comcast has neighborhoods located below channel 100 where at least four sports channels are located in a block of five adjacent channel positions.[103] These neighborhoods, moreover, are on average of a similar size as the news neighborhoods identified by Bloomberg; 69.5% of these sports neighborhoods contain either four or five sports channels.[104]

Indeed, the Enforcement Bureau, in its comments in the Comcast-Tennis Channel dispute, recently referred to Comcast's groupings of sports channels as constituting neighborhoods. *See* In re Tennis Channel, Inc. v. Comcast Cable Commc'ns., LLC, MB Docket No. 10-204 File No. CSR-8258-P (July 8, 2011), Enforcement Bureau's Comments, at 15 ("Golf Channel and Versus, Comcast's affiliated networks, received broad distribution from Comcast and frequently occupy channel assignments in the same neighborhood of sports channels such as ESPN."). Thus, the only

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[100] *Id.*, ¶ 40.

[101] *Id.*, ¶ 22(c).

[102] {{ [redacted] }}

[103] Ex. A, ¶ 57.

[104] *Id.*

FCC precedent on neighborhoods has found that a similar number of channels in the sports genre constitute a sports neighborhood.[105]

Such sports neighborhoods are also commonly found on the headends of other cable operators. For example, on 72.7% of the headends that carry BTV in the 35 most populous DMAs, Cablevision has neighborhoods located below channel 100 where four sports channels are located in a block of five adjacent channel positions;[106] Charter has those sports neighborhoods on 60.3% of such headends;[107] and Time Warner has those sports neighborhoods on 52.2% of such headends.[108] These neighborhoods furthermore are also of a similar size as the news neighborhoods identified by Bloomberg. All of Cablevision's neighborhoods have four sports channels;[109] all of Time Warner's neighborhoods have between four and six sports channels (with over eighty percent containing four or five sports channels);[110] and the majority of Charter's sports neighborhoods contain between four and six sports channels.[111]

To be sure, Mr. Egan does concede that news channels "throughout the cable industry [are] often found in the 'four out of five' news groups cited by Bloomberg."[112] Nowhere, however, does he provide a meaningful explanation for why the groupings of news channels carried by DirecTV, Verizon, AT&T U-Verse, and Insight "set the industry standard" for the definition of a neighborhood while those channel groupings employed by Comcast, Cablevision, Charter, and Cox

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[105] {{ [redacted] }}

[106] Ex. A, ¶ 58.

[107] *Id.*, ¶ 60.

[108] *Id.*, ¶ 59.

[109] *Id.*, ¶ 58.

[110] *Id.*, ¶ 59.

[111] *Id.*, ¶ 60.

[112] Answer, Ex. 4, ¶ 27.

do not. While, for example, Mr. Egan refers to the market share of MVPDs,[113] the combined subscribership of Comcast, Cablevision, Charter, and Cox exceeds the combined subscribership of the four MVPDs that Mr. Egan claims set the industry standard for neighborhooding.[114] Thus, contrary to Mr. Egan's assertion, market share may not serve as a legitimate ground for concluding that DirecTV, Verizon, AT&T U-Verse, and Insight set the industry standard for what constitutes a neighborhood; in fact, market share leaders Comcast, Cablevision, Charter, and Cox do so.[115] As James Trautman puts it, "To conclude that the practice of a minority of providers (each of which has key technological and market-positioning distinctions from Comcast) represents some sort of industry 'standard' makes no sense."[116]

In its Answer, Comcast advances its own theory for why the channel groupings found on the channel lineups of the four MVPDs identified by Mr. Egan establish the industry definition; it contends these are the neighborhoods that "are found on the systems of those MVPDs that do group their news channels by genre."[117] This argument, however, is entirely circular as it simply assumes that Comcast, Cablevision, Charter, and Cox (as well as other MVPDs) do not group their news channels by genre, which as noted above is demonstrably inaccurate. As shown in the

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[113] *See id.*, ¶ 22.

[114] *See* National Cable and Telecommunications Association, "Top 25 Multichannel Video Programming Distributors as of Mar. 2011," *available at* http://www.ncta.com/Stats/TopMSOs.aspx (last visited Aug. 26, 2011) (combined subscribership of Comcast, Cablevision, Charter, and Cox is 35,465,000, while the combined subscribership for DirecTV, Verizon, AT&T, and Insight is only 26,969,000).

[115] Mr. Egan attempts to group Time Warner Cable with DirecTV, Verizon, AT&T U-Verse, and Insight, noting that the company has news neighborhoods that contain at least 70% of news channels on 53% of the headends in the DMAs that he examined. Answer, Ex. 4, ¶ 20. It is also true, however, that Time Warner Cable employs news neighborhoods similar to those employed by Comcast, Cablevision, Charter, and Cox. Of Time Warner headends in the 35 most-populous DMAs that carry BTV, for example, 36.8% have news neighborhoods located below channel 100, and 95.3% of these neighborhoods have between 4 and 6 news channels. Ex. A, ¶ 43.

[116] Ex. B, ¶ 11.

[117] Answer, ¶ 41.

Complaint and reviewed above, the evidence is overwhelming that Comcast does organize its news channels by genre since the odds that the news groupings identified by Bloomberg would occur by chance are infinitesimal.[118] Moreover, the same is true with respect to Cablevision, Charter, and Cox. The odds that groupings of news channels would occur by chance at the frequency with which they are found on each cable operator's headends also are so small that they cannot be calculated with precision by a computer. For Cablevision, the chance is approximately 10 to the negative 114th power (or a decimal point followed by 113 zeros and then a "1").[119] For Charter, the chance is approximately 10 to the negative 173 power (or a decimal point followed by 172 zeros and then a "1").[120] And for Cox, the chance is approximately 10 to the negative 57th power (or a decimal point followed by 56 zeros and then a "1").[121] In the words of longtime cable industry executive Don Mathison, "[t]here is nothing random about cable television system lineups."[122]

In sum, industry practice shows that there are generally two types of news channel groupings found on MVPDs' channel lineups: the 10-15 channel neighborhoods located above channel 100 identified by Mr. Egan, and the 4-6 channel neighborhoods located below channel 100 that are often found on the headends of Comcast and other cable operators. *See* Ex. C, ¶ 24. Comcast offers no persuasive reason why one kind of these groupings should be considered neighborhoods while the other kind should not. Rather, as James Trautman explains, the MVPDs identified by Comcast "are more appropriately viewed as operating at the industry 'cutting edge' in terms of neighborhooding, while the much more common (and longstanding) practice of grouping smaller collections of channels [utilized by Comcast and other cable operators] should logically be viewed as the 'standard'

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[118] *See supra* Section III.A.1.

[119] Ex. A, ¶ 49.

[120] *Id.*

[121] *Id.*

[122] Ex. E, ¶ 12.

for the determination of a neighborhood."[123] Although the news neighborhoods identified by Mr. Egan are certainly larger than the news neighborhoods identified by Bloomberg, both result from deliberate decisions to group channels by genre, and more importantly, because they both contain a "significant number or percentage" of news channels, both qualify as neighborhoods pursuant to the definition of the term set forth in the news neighborhooding condition. *See* Ex. C, ¶ 24.

C. The Neighborhoods Identified by Bloomberg Are Consistent with the Record Before the Commission

Comcast accuses Bloomberg of trying to pull a "transparent bait-and-switch,"[124] because "[d]uring the proceeding in which it advocated and the Commission adopted the [news neighborhooding condition], Bloomberg made clear that a news channel 'neighborhood' must include many more channels [than four]."[125] Following Bloomberg's advocacy, however, the Commission adopted a specific definition of neighborhood, and it is that definition which applies in this proceeding. As a result, regardless of how Bloomberg may have used the term "neighborhood" in the past, its filings with the Commission could not possibly be interpreted as conceding that the channel groupings identified by Bloomberg in this proceeding do not qualify as neighborhoods for purposes of the news neighborhooding condition. After all, the definition of "neighborhood" adopted by the Commission had yet to be formulated at the time of Bloomberg's filings.[126]

In any event, Comcast's assertion that Bloomberg made clear in its advocacy that a channel grouping must include many more than four channels, *e.g.*, 10-15, before it may constitute a neighborhood is transparently false. In its Petition to Deny, for example, Bloomberg specifically pointed to a four-channel sports grouping on Comcast's Washington, D.C. system as an example of

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[123] Ex. B, ¶ 11.

[124] Answer, ¶ 61.

[125] Answer, ¶ 57.

[126] Indeed, the Commission never defined "neighborhooding" or "neighborhood" prior to the FCC Order adopted in January 2011.

a neighborhood: "Comcast, too, is already creating neighborhoods on its systems. For instance, on the Comcast system in the city of Washington, D.C., Comcast currently 'neighborhoods' sports channels. It lines up together Comcast's own Versus (Channel 7), ESPN2 (Channel 8), ESPN (Channel 9) and Comcast Sports (Channel 10)."[127]

Likewise, in discussing Comcast's trials in Indiana, Bloomberg referred to a grouping of four news channels (CNN, HLN, MSNBC, and CNBC) as constituting a neighborhood. Specifically, Bloomberg noted that in Comcast's Indiana experiment CNBC viewers will "generally continue watching CNBC at its initial position (Channel 36). As a result, BTV and Fox Business will be harmed since they have not been provided with channel positions *in that neighborhood*."[128] That neighborhood is a four-channel news grouping that includes CNN on Channel 32, HLN on Channel 33, MSNBC on Channel 35, and CNBC on Channel 36.[129]

To be sure, Comcast is correct that Bloomberg also referred to the larger channel groupings employed by DirecTV, Dish, AT&T, and Verizon as neighborhoods.[130] But there is no inconsistency between taking the position that a four or five channel grouping is a neighborhood and also maintaining that a ten-channel grouping is a neighborhood. Bloomberg referred to both types of channel groupings as neighborhoods in its advocacy before the Commission and believes

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[127] Bloomberg Petition to Deny at 63-64. *See also id.* at 65 ("Comcast cannot deny the value and importance of neighborhooding, in that Comcast itself is using neighborhooding to cause competitive harm to programmers in competition with them by denying competitive channels access to neighborhoods. In the Washington D.C. system, for example, when Comcast introduced its own Versus sports network, it placed it on a channel adjacent to the two principal ESPN channels, plus its own Comcast Sports Network (channels 7-10), while leaving MASN's principal channel more than 30 channels away.").

[128] Dec. 8, 2010 Ex Parte at 8 (emphasis added).

[129] *See* XFINITY – View New Lineup, http://www.comcast.com/xflineup/lineup.html (last visited Aug. 26, 2011) (containing channel lineups for Logansport, Indiana; Peru, Indiana, and Wabash, Indiana).

[130] *See* Answer, ¶ 58.

that both kinds of channel groupings constitute neighborhoods pursuant to the definition adopted by the Commission in the FCC Order.

Comcast's related contention that Bloomberg argued before the Commission that Comcast currently does not have neighborhoods also falls wide of the mark.[131] As reviewed earlier in this section, Bloomberg specifically pointed in its filings with the Commission in the Merger proceeding to sports neighborhoods and news neighborhoods found on Comcast's current channel lineups. Moreover, Bloomberg specifically alleged during the proceeding that "Comcast itself is using neighborhooding to cause competitive harm to programmers in competition with them by denying competitive channels access to neighborhoods."[132]

While Comcast claims that the premise of Bloomberg's advocacy before the Commission "was that Comcast did *not* 'neighborhood' news channels,"[133] that assertion is not correct. Rather, the premise of many of the quotes Comcast cherry-picks from Bloomberg's advocacy was that Comcast did not neighborhood BTV with CNBC, *see, e.g.*, Bloomberg Petition to Deny at 7 ("BTV has higher viewership when it is carried on cable systems in non-U.S. markets where its channel is neighborhooded with CNBC and similar news programming.") (cited in footnote 41 of the Answer); December 10, 2010 Ex Parte ("[W]e indicated that Bloomberg supported a condition requiring Comcast to locate business news channels on channels contiguous and adjacent to CNBC everywhere CNBC is carried.") (cited in footnote 41 of the Answer), a premise that is indisputably true.

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[131] *See, e.g.*, *id.*

[132] Bloomberg, L.P.'s Reply to Comcast-NBCU Opposition, In re Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc., For Consent to Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56, at 69 (Erratum filed June 24, 2010) ("Bloomberg Reply to Opposition").

[133] Answer, ¶ 27.

While Comcast points to a couple of passages from Bloomberg's advocacy that could be interpreted to imply that Comcast currently does not have neighborhoods, the context of these filings is critical. In its advocacy at the Commission, Bloomberg sometimes used the term neighborhood as shorthand for "putting *all* program channels in the same genre adjacent to one another in the channel lineup."[134] Bloomberg did so because at the time it was asking for a condition that would have required Comcast to group all business news channels together.[135] In the end, however, the Commission chose not to require that all business news channels be grouped together (but instead required independent news channels to be included in news neighborhoods), and the Commission chose not to define the term neighborhood as a grouping of *all* news channels. Rather, only a "significant number or percentage" of news channels is required, and as explained above, hundreds of channel groupings now carried on Comcast headends meet that test.

D. Bloomberg's Interpretation of the News Neighborhooding Condition Leads to Reasonable Results While Comcast's Interpretation of the Condition Does Not.

Comcast complains that interpreting the definition of neighborhood in the news neighborhooding condition to refer to at least four news channels in any block of five adjacent channel positions would lead to "absurd and incoherent results" because some Comcast headends then would have more than one standard-definition news neighborhood.[136] Comcast's argument, however, relies on a mistaken premise; namely, that "the concept of 'neighborhooding" refers to

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[134] *See* Letter from Stephen Díaz Gavin, Counsel to Bloomberg, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56, at Attachment p. 2 (filed June 21, 2010) (regarding meeting with Joshua Cinelli, Media Advisor to Commissioner Copps) ("June 21, 2010 Ex Parte") (emphasis added).

[135] *See* Bloomberg Petition to Deny, Ex. 2, at 1 (proposing condition requiring Comcast to "reorganize its channel placement alignment so that other Business News Channels are located contiguous and adjacent to CNBC at each channel position where CNBC is carried (so-called 'Neighborhooding')").

[136] Answer, ¶ 62.

"placing all (or at least most) channels of a kind in a *single* location."[137] As reviewed above, the Commission did not define the term "neighborhood" to refer to groups of *all* news channels or *most* news channels.[138] Rather, it defined the term to refer to channel groupings where a "significant number or percentage" of news channels are located "substantially adjacent" to one another. Given this definition, it is entirely reasonable that a channel lineup could have more than one news neighborhood.[139] If, for example, 40% of news channels were grouped together in one location and 40% of such channels were grouped together in another location, both neighborhoods would contain "a significant percentage" of news channels under any reasonable meaning of that term. Moreover, both neighborhoods would reflect a deliberate decision to organize news channels by genre and would generally be considered to be neighborhoods by those in the industry. As James Trautman explains, "it is perfectly reasonable for an MVPD to design multiple neighborhoods featuring channels within a broadly-defined genre such as news."[140]

To bolster its argument, Comcast claims that the language of the news neighborhooding condition envisions that there can only be one news neighborhood per headend because: (1) the condition is triggered if there are a significant number or percentage of news channels "in a neighborhood;" and (2) when the condition is triggered, Comcast is obligated to carry all independent news channels "in that neighborhood."[141] However, Comcast's emphasis on the fact that the condition refers to the term "neighborhood" in the singular ignores the basic rule of construction that the singular generally includes the plural. *See, e.g.*, *Public Citizen, Inc. v. Mineta*, 340 F.3d 39, 54 (2d Cir. 2003) ("The TREAD Act's 'a tire' plainly means one tire, two tires, three tires,

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[137] *Id.* (emphasis in original).

[138] *See supra* Section III.A.2.

[139] *See* Ex. D, ¶ 23.

[140] Ex. B, ¶ 16. *See also* Ex. C, ¶ 20.

[141] *See* Answer, ¶ 67.

or all four tires, under the elementary rule of statutory construction that the singular . . . includes the plural"). Indeed, this rule of construction appears at the very beginning of the U.S. Code. *See* 1 U.S.C. § 1 ("In determining the meaning of any Act of Congress, unless the context indicates otherwise – words importing the singular include and apply to several persons, parties, or things").

Assume, for example, that the Commission had adopted the following condition: "If Comcast now or in the future carries CNBC on *a system*, it must also carry all unaffiliated business news channels on *that system*." Notwithstanding the use of the singular form, such a condition would not be interpreted to apply only if Comcast carried CNBC on a single system. Rather, it obviously would be interpreted to mean that unaffiliated business news channels must be carried on any system where CNBC is carried. The same is true with the news neighborhooding condition at issue here; independent news channels must be included in any news neighborhood that Comcast carries.

Indeed, in another condition contained in the FCC Order, the Commission clearly used the terms "a" and "that" to refer to the plural as well as the singular. Specifically, the Commission adopted a set-top box condition that employs the same "if/then" structure as the news neighborhooding condition: if a Comcast set-top box has "a capability that enables a customer to access *a Specialized Service*," then "the requirements of Section IV.E.1 & 2 shall apply to *that Specialized Service*."[142] Clearly, this condition is not limited to situations in which a set-top box enables a customer to access only "one" Specialized Service, but instead also applies if a set-top box enables a customer to access multiple Specialized Services. In addition, if a set-top box enables a customer to access multiple Specialized Services, the conditions set forth in Section IV.E.1 & 2 that limit Comcast's ability to discriminate in the offering of Specialized Services would clearly apply to each and every Specialized Service accessible by the set-top box. Any other interpretation of the condition would be wholly illogical.

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[142] FCC Order at 4363 (App. A, Sec. IV.F) (emphasis added).

While Comcast contends that the "Commission's choice of the singular ('a neighborhood')" in the news neighborhooding condition "was intentional,"[143] the "evidence" to which it points does not support its position. To be sure, Bloomberg suggested that the Commission alter the language of the news neighborhooding condition to change the term "that neighborhood" to "that and all such neighborhoods" or "every such neighborhood."[144] Bloomberg, however, did not make this suggestion because it believed that the language of the condition was restricted to a single neighborhood or was likely to be interpreted as such. Rather, Bloomberg accurately foresaw that Comcast might advance in the future the argument it is now making and understandably attempted to eliminate the need to respond to it in the event that Comcast failed to comply with the condition. In short, Bloomberg, through its suggested edit, was not attempting to change the meaning of the news neighborhooding condition but rather, to quote Macbeth, "make assurance double sure."[145] *See, e.g., Shook v. D.C. Fin. Responsibility and Management Assistance Auth.*, 132 F.3d 775, 782 (D.C. Cir. 1998).[146]

In any event, the fact that the Commission did not include Bloomberg's suggested change to the language in the condition does not mean that the Commission intended for the condition to apply only to Comcast systems with a single neighborhood. The Commission, for example, might have thought that it was unnecessary to make such a change near the end of the process because the language of the condition obviously was not limited to Comcast headends with only one

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[143] Answer, ¶ 68.

[144] Letter from Markham C. Erickson, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (filed Jan. 19, 2011) (regarding proposed neighborhooding language); Letter from Markham C. Erickson, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (filed Jan. 18, 2011) (regarding proposed neighborhooding language).

[145] *Macbeth*, IV.i.4.

[146] Moreover, what matters is the Commission's text, not what the parties may have advocated during the proceeding. *See Checkovsky v. SEC*, 23 F.3d at 389 ("It is fundamental that [agency] opinions, like judicial opinions, speak for themselves").

neighborhood (for the reasons set forth by Bloomberg earlier in this section). Or, given that Bloomberg's proposed change was contained in ex parte letters that were submitted into the record both on the day that the FCC Order was adopted and the day after the FCC Order was adopted, it is probably the case that most or all of the Commissioners were not even aware of Bloomberg's proposed change when they cast their votes so there was not a conscious decision to reject Bloomberg's suggestion.

Whatever the case, Comcast, at the end of the day, does not even appear to be persuaded of the strength of its own argument. While it claims that "the Commission deliberately crafted the Condition to apply to a single news neighborhood, not multiple news neighborhoods,"[147] it nonetheless concedes that the language of the condition "perhaps" contemplates "one SD and one HD neighborhood, to accommodate channels of either type."[148] Comcast, however, cannot have it both ways. Either the language to which Comcast points in the condition – "a neighborhood" and "that neighborhood" – precludes the condition from applying to more than a single neighborhood on a system or it does not. And as Comcast concedes that two separate groupings of news channels – one HD and one SD – both may qualify as neighborhoods pursuant to the language of the condition, it plainly does not.

Contrary to Comcast's claim, Bloomberg's interpretation of the term "neighborhood" does not lead to "absurd and incoherent results."[149] It is simply not true that "[i]f 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

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[147] Answer, ¶ 69.

[148] *Id.*, ¶ 67.

[149] *Id.*, ¶ 62.

groupings of news channels."[150] In the first place, while Comcast claims that this assertion is supported by the Declaration provided by Mark Israel, Dr. Israel nowhere claims that *any* Comcast channel lineup would have "several standard definition 'news neighborhoods'" pursuant to Bloomberg's position. Rather, he only measures channel lineups that would have "multiple groupings of news channels,"[151] a term that can refer to two neighborhoods rather than several neighborhoods.[152] Even more importantly, as reviewed above, Comcast dramatically over-counts the number of news channels carried on Comcast headends, thus leading Dr. Israel to overstate substantially the number of news groupings found on those headends. When news channels are not over-counted, *fewer than 15%* of Comcast headends (51 of 369) located in the 35 most-populous DMAs that carry BTV and have a news neighborhood that does not include BTV have more than one standard definition news neighborhood.[153] Moreover, all of these headends have only two such neighborhoods containing U.S. news channels, and there would almost always be no change required in one of the neighborhoods, since BTV is already carried in it in all but one case.

Neither is it true that BTV is already included in a news neighborhood in {{[redacted]}} of the headends in the {{[redacted]}} that carry BTV and have news neighborhoods.[154] Again, because Comcast dramatically over-counts the number of news channels carried on Comcast headends, this figure is dramatically overstated. Indeed, when news channels are counted

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[150] *Id.* (emphasis omitted).

[151] Answer, Ex. 5, Table II.

[152] Merriam Webster's Collegiate Dictionary, 10th Edition (1995), at 764 (defining "multiple" as "consisting of, including, including or involving more than one").

[153] Ex. A, ¶ 22(a). Even if the Commission were to count The Weather Channel as a news channel, just over 15% of Comcast headends located in the 35 most-populous DMAs that carry BTV and have a news neighborhood that does not include BTV have more than one standard definition news neighborhood. The raw numbers change from 51 of 369 to 58 of 384. Ex. A, ¶¶ 20(d), 22(a), 24.

[154] *See* Answer, ¶ 65.

appropriately, BTV is currently included in a news neighborhood in *fewer than 15%* of the Comcast headends (50 of 369) in the 35 most-populous DMAs that carry BTV and have a news neighborhood that does not include BTV.[155]

With respect to the small fraction of headends identified by Bloomberg that have two standard definition news neighborhoods, the plain terms of the news neighborhooding condition provide that BTV must be located in both such neighborhoods. If "a neighborhood" exists, then independent news channels must be included in "that neighborhood."[156] Such an outcome does not result from the Commission "forcing Comcast to provide Bloomberg with carriage at *multiple* locations on Comcast's systems."[157] Rather, it stems from Comcast's own decision to carry news channels in two groupings.

It is important to note that Comcast already carries many channels at multiple locations on its systems. In particular, there are 17,758 instances where Comcast carries a network at more than one location on a headend.[158] Moreover, in 4,783 cases, Comcast carries a network at a location below channel 100 and another location above channel 100.[159] Curiously, the two networks that

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[155] Ex. A, ¶ 22-22(a). Again, even if the Commission were to count The Weather Channel as a news channel, BTV is currently carried in a news neighborhood in just over 15% of Comcast headends in the 35 most-populous DMAs that carry BTV and have a news neighborhood that does not include BTV. The raw numbers change from 50 of 369 to 58 of 384. Ex. A, ¶ 24.

[156] The issue raised by Comcast regarding BTV's inclusion in HD news neighborhoods, *see* Answer, ¶ 66, is a red herring in this proceeding. Because Comcast does not widely carry BTV's HD feed, Bloomberg has not requested that BTV be included in Comcast's HD news neighborhoods. Of course, if Comcast *were to choose to carry* the SD and HD feed of an independent news channel, such as BTV, on a headend, and were to have both an SD news neighborhood and an HD news neighborhood on that headend, then it would be required to include the SD feed of the independent news channel in the SD news neighborhood and the HD feed of the independent news channel in the HD news channel (just as it generally includes CNBC and many other news channels in both SD and HD neighborhoods).

[157] Answer, ¶ 66 (emphasis in original).

[158] Ex. A, ¶ 63. This figure does *not* count instances where Comcast carries the SD feed of a channel in one location, and the HD feed in another location. *Id.* at n.9.

[159] *Id.*, ¶ 66.

most commonly receive such treatment are both affiliated with Comcast: ShopNBC and Style. ShopNBC is carried on a location below channel 100 and a second location above channel 100 on 203 Comcast headends, while Style is similarly carried on 161 headends.[160]

Nevertheless, because Bloomberg's original objective in pursuing a neighborhooding condition was to secure carriage for BTV wherever CNBC was carried,[161] in those instances where two standard definition news neighborhoods exist on a Comcast headend, Bloomberg is content to be carried only in the neighborhood that includes CNBC.[162]

Such an outcome does not result in "cherry-picking," as Comcast contends,[163] but rather is consistent with the purpose of the news neighborhooding condition and "the special importance of news programming to the public interest."[164] In the small fraction of Comcast headends with two neighborhoods, there is generally one neighborhood located below channel 100 that contains channels such as CNN, CNBC, Fox News, Headline News, and MSNBC, and another neighborhood above channel 100 with channels such as BTV, Fox Business Network, C-SPAN2, and C-SPAN3. It is disingenuous for Comcast to imply that the purpose of the news neighborhooding condition is served by including BTV in the latter neighborhood and excluding it from the former neighborhood given that, as reviewed above, the most watched and lucrative news

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[160] *Id.*, ¶ 67.

[161] Bloomberg Petition to Deny at iii.

[162] To the extent that Comcast chooses to place the standard definition feed of CNBC in two news neighborhoods on a single headend, then BTV should be located in both such neighborhoods, and Comcast cannot legitimately complain about being "forced" to carry the standard definition feed of BTV twice when it chooses to carry the standard definition channel of its own business news channel, CNBC, twice. In those rare cases (two headends) where there are two neighborhoods, neither of which include CNBC, Bloomberg is content to be carried only in the neighborhood that includes MSNBC.

[163] Answer, ¶ 66.

[164] FCC Order, ¶ 4287.

channels are included in the neighborhood that is located below channel 100.[165] As Professor Ferguson puts it, the difference is "similar to the neighborhood we all hope to live in, versus the less desirable one. One is a preferred neighborhood, where viewers are likely to spend quality time (rather than rarely visit)." *See* Ex. D, ¶ 23. Taken together with its implacable opposition to moving BTV into news neighborhoods located below channel 100, as expressed in prior business negotiations as well as this proceeding, Comcast's suggestion that Bloomberg is not entitled to relief under the news neighborhooding condition on any headend where it is already located in a neighborhood above channel 100 brings to mind the famous commandment from George Orwell's Animal Farm: "ALL ANIMALS ARE EQUAL BUT SOME ANIMALS ARE MORE EQUAL THAN OTHERS."[166] Comcast apparently believes the same to be true with respect to neighborhoods.

In the final analysis, it is Comcast's interpretation of the news neighborhooding condition that is "absurd and incoherent," not Bloomberg's. In Comcast's view, the phrase "now or in the future" means only "in the future," and "a significant number or percentage" of news channels actually refers to "all or a significant majority" of news channels. Indeed, if a neighborhood only exists when all or virtually all news channels are included, then there would never be an instance where the news neighborhooding condition would be triggered. This is because by excluding independent news channels from groupings of news channels, Comcast would ensure that those groupings would not qualify as news neighborhoods. The condition would therefore not apply, and Comcast would remain free to exclude independent news channels from such groupings.

In short, Comcast's interpretation of the news neighborhooding condition basically does not require it to do anything. The company remains free to exclude independent news channels from

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[165] *See supra* Section III.A.1.

[166] George Orwell, *Animal Farm* 133 (First Signet Classic Printing 1996) (1946).

groupings on Comcast systems where news channels are organized by genre now or in the future. Such a result is not consistent with the plain terms of the news neighborhooding condition, and it is not consistent with the Commission's recognition in the FCC Order of the "special importance of news programming to the public interest."[167] Neither does Bloomberg believe that Comcast's interpretation reflects the Commission's intent in adopting this condition.

IV. COMCAST GREATLY EXAGGERATES ANY BURDENS ASSOCIATED WITH IMPLEMENTING THE NEWS NEIGHBORHOODING CONDITION

In its Answer, Comcast presents a parade of horribles of what will occur if it is required to abide by the plain meaning of the news neighborhooding condition.[168] As will be discussed below, these claims are substantially exaggerated and belied by experience. Before responding to them, however, it is important to note that these policy arguments have no place in this proceeding because they address whether the news neighborhooding condition should have been imposed in the first place rather than what the condition means.

If Comcast believed that the news neighborhooding condition as written was too burdensome, it could have filed a petition for reconsideration with the Commission.[169] Alternatively, Comcast could have rejected the Commission's grant of its application and proceeded to an administrative hearing.[170] It did neither of these things. Rather, it and NBCU "accept[ed] as binding the conditions and enforceable commitments included in the [FCC Order] and expressly waive[d] any right they may have to challenge the Commission's legal authority to adopt and enforce such conditions and commitments."[171] Accordingly, Comcast now may not complain that it is too

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[167] FCC Order at 4287, ¶ 122.

[168] *See* Answer, ¶¶ 71-87.

[169] *See* 47 C.F.R. § 1.106.

[170] *See* 47 C.F.R. § 1.110.

[171] *See supra* note 6.

burdensome for the company to comply with the news neighborhooding condition. Comcast cannot gain the substantial benefits resulting from its merger with NBCU and then contest, after the fact, the validity of the very conditions that allowed it to obtain those benefits.

Comcast seeks to evade this problem by recasting its arguments in an interpretive light. Comcast claims, in essence, that Bloomberg's interpretation of the condition must be wrong because it is inconsistent "with the Commission's intent to minimize disruptions to consumers and other programming networks."[172] As discussed below, however, there is one rather large problem with this argument; Comcast is unable to point to a single passage in the FCC Order where the Commission expressed any such intent.

A. Comcast's Frequent Channel Changes Substantially Undermine Its Claim that the News Neighborhooding Condition Imposes Substantial Burdens

Turning to the merits of Comcast's argument that implementation of the news neighborhooding condition "would impose substantial costs, disruption and burden on Comcast's customers and on displaced television networks,"[173] Comcast sets forth a litany of problems that will allegedly ensue if Comcast is required to move BTV into existing news neighborhoods:
(1) Customers will be confused and frustrated by not being able to find their favorite channels because popular programming networks will need to be relocated;[174] (2) Comcast's customer service representatives will be overwhelmed by high call volumes;[175] (3) Comcast will incur significant

[172] *See* Answer at 36.

[173] *Id.*, ¶ 71.

[174] *Id.*, ¶ 80.

[175] *See id.*, ¶ 81.

costs;[176] and (4) Comcast will have to perform substantial physical engineering work at each affected headend.[177]

These complaints, however, ring hollow when one examines the frequency with which Comcast changes channel positions on its headends. Comcast regularly (and voluntarily) relocates channels on its headends and is able to manage the burdens associated with those changes. As a result, there is no reason to think that Comcast will be unable to deal successfully with implementation of the news neighborhooding condition.

Comparing Comcast's channel lineups from 2010 and 2011, Professor Crawford has found that Comcast moved networks *at least 10,625 times* in an approximately eleven-month period.[178] This statistic, moreover, only counts those networks that were moved from one location on the channel lineup to another or were given a second location and does not count networks that were added or dropped from headends during these eleven months. In the 35 most-populous DMAs, networks were relocated at least 6,806 times.[179] When looking both at all Comcast headends as well as those located in the 35 most-populous DMAs, at least 3.6% of networks were relocated during just this eleven-month period.[180]

While Comcast claims that changing channel positions between 1-99 is particularly burdensome,[181] Comcast also regularly relocates networks within that channel range. During the same eleven-month period, Comcast moved networks *at least 1,752 times* between channels 1-99, and

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[176] *See id.*, ¶¶ 83-86.

[177] *See id.*, ¶ 85.

[178] Ex. A, ¶ 106.

[179] *Id.*

[180] *Id.*

[181] *See* Answer, ¶¶ 72, 82.

at least 2.8% of such networks were relocated in that channel range.[182] Therefore, networks located between channels 1-99 were relocated at only a slightly lower rate than all networks (2.8% vs. 3.6%).[183] These aggregate statistics demonstrate that Comcast is quite capable of instituting whatever channel changes are necessary to include BTV in existing news neighborhoods. A review of some recent specific channel changes is also illuminating because these moves reveal that Comcast is more than happy to deal with any burdens associated with relocations in order to benefit its own networks.

Culpeper, VA (Washington DC DMA)[184] – Between 2010 and 2011, Comcast reorganized the news channels located between channels 1-99 on the Culpeper headend. HLN was moved from channel {{[redacted]}} to channel {{[redacted]}}, CNN was moved from channel {{[redacted]}} to channel {{[redacted]}}, and Fox News was moved from channel {{[redacted]}} to channel {{[redacted]}}.[185] These channel changes placed CNBC, which remained at channel {{[redacted]}}, in a four-channel news neighborhood.[186]

In Culpeper, Comcast also moved Comcast SportsNet from channel {{[redacted]}} to channel {{[redacted]}} so that it would be located next to ESPN, ESPN2, and MASN which are now located at channels {{[redacted]}},{{[redacted]}}, and {{[redacted]}}.[187] In order to make this change, Comcast moved Lifetime from channel {{[redacted]}} to channel {{[redacted]}}.[188]

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[182] Ex. A, ¶ 108. With respect to headends located in the 35 most-populous DMAs, at least 2.4% of networks between channels 1-99 were moved from 2010 to 2011.

[183] *Id.*, ¶¶ 106, 108.

[184] This headend also serves customers in {{[redacted]}}

[185] *See* Ex. I.

[186] *See Id.*

[187] *See Id.*

[188] *See Id.*

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Martinsburg, WV (Washington DC DMA)[191] – Between 2010 and 2011, Comcast moved CNBC from channel {{[redacted]}} to channel {{[redacted]}} on the Martinsburg headend so that it would be next to CNN, HLN, and MSNBC.[192] At the same time, it moved Fox News from channel {{[redacted]}}

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[189] *See Id.*

[190] *See Id.*

[191] This headend also serves customers in {{[redacted]}}

[192] *See* Ex. I.

to channel {{[redacted]}} so that it would also be in this new news neighborhood.[193] In order to include CNBC and Fox News in this new news neighborhood, Comcast chose to change the channel positions of Lifetime, AMC, Spike TV, and TBS.[194] Notably, TBS is one of the networks that Comcast specifically complains about potentially having to move if the news neighborhooding condition is implemented.[195]

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Detroit, MI (Detroit, MI DMA)[197] – Between 2010 and 2011, Comcast moved Comcast-affiliated channels The Golf Channel from channel {{[redacted]}} to channel {{[redacted]}} and Versus from channel {{[redacted]}} to channel {{[redacted]}} on its Detroit headend so that they would be located in a sports neighborhood with Fox Sports Detroit, ESPN2, and Speed Channel, which were moved to channels

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[193] *See Id.*

[194] *See Id.*

[195] *See* Answer, ¶ 73.

[196] *See* Ex. I.

[197] This headend also serves customers in {{[redacted]}}

{{[redacted]}}, {{[redacted]}}, and channels {{[redacted]}}, respectively.[198] Channels {{[redacted]}} and {{[redacted]}} were left empty so that the neighborhood had five consecutive sports channels.[199] In order to create this neighborhood with the Golf Channel and Versus, Comcast chose to change the channel positions of networks such as The Cartoon Network, Nickelodeon, and A&E.[200] Notably, A&E and the Cartoon Network are two of the networks that Comcast specifically complains about potentially having to move if the news neighborhooding condition is implemented.[201]

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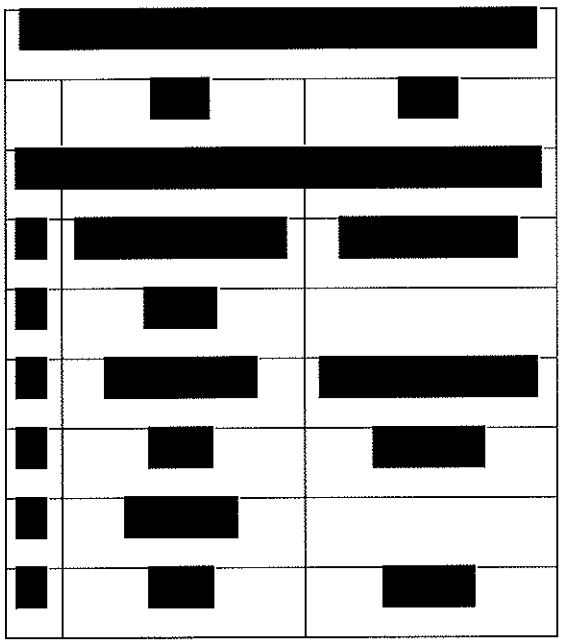

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[198] *See* Ex. I.

[199] *See Id.*

[200] *See Id.*

[201] *See* Answer, ¶¶ 73, 78.

[202] *See* Ex. I.

Indianapolis, IN (Indianapolis, IN DMA)[203] – Between 2010 and 2011, Comcast moved The Golf Channel from channel {{[redacted]}} to channel {{[redacted]}} and Versus from channel {{[redacted]}} to channel {{[redacted]}} on its Indianapolis headend so that its affiliated channels would be located in a sports neighborhood with the ESPN, ESPN2, and the Big Ten Network, which were moved to channels {{[redacted]}}, {{[redacted]}}, and {{[redacted]}}, respectively.[204] Channel {{[redacted]}} was left empty so that the neighborhood had five consecutive sports channels.[205] In order to create this neighborhood with the Golf Channel and Versus, Comcast chose to change the channel positions of networks such as A&E, ESPN, and TNT.[206] Notably, A&E and ESPN are two of the networks that Comcast specifically complains about potentially having to move if the news neighborhooding condition is implemented.[207]

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[203] This headend also serves customers in {{[redacted]}}

[204] *See* Ex. I.

[205] *See Id.*

[206] *See Id.*

[207] *See* Answer, ¶¶ 73, 78.

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Amherst, VA & Lynchburg, VA[209] (Roanoke/Lynchburg, VA DMA) – Between 2010 and 2011, Comcast moved CNBC from channel {{ }} to channel {{ }} and MSNBC from channel {{ }} to channel {{ }} on its Amherst and Lynchburg headends so that they would be part of a news neighborhood that also includes Cable News Network, HLN, and Fox News Channel, which are located on channels {{ }}, {{ }}, and {{ }}, respectively.[210] In order to move MSNBC into the news neighborhood, Comcast chose to relocate the Discovery Channel,[211] one of the networks that it specifically complains about potentially having to move if the news neighborhooding condition is implemented.[212]

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[208] *See* Ex. I.

[209] This headend also serves customers in {{ }}

[210] *See* Ex. I.

[211] *See Id.*

[212] *See* Answer, ¶ 78.

At the same time, Comcast also moved Comcast SportsNet from channel {{[redacted]}} to channel {{[redacted]}} so that it would be positioned by ESPN and ESPN2, which are located on channels {{[redacted]}} and {{[redacted]}}.[213] In order to relocate Comcast SportsNet, Comcast chose to relocate AMC.[214]

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Madison, FL (Tallahassee, FL DMA)[216] – Between 2010 and 2011, Comcast moved CNBC from channel {{[redacted]}} to channel {{[redacted]}} and MSNBC from channel {{[redacted]}} to channel {{[redacted]}} so that they would be part of a news neighborhood with CNN (which was moved from channel

[213] *See* Ex. I.

[214] *See Id.*

[215] *See Id.*

[216] This headend also serves customers in {{[redacted]}}

{{[redacted]}} to channel {{[redacted]}}), Fox News (which was moved from channel {{[redacted]}} to channel {{[redacted]}}), and HLN (which was moved from channel {{[redacted]}} to channel {{[redacted]}}) on the Madison headend.[217] In order to create this news neighborhood, Comcast chose to relocate A&E and TBS,[218] two of the networks that it specifically complains about potentially having to move if the news neighborhooding condition is implemented.[219]

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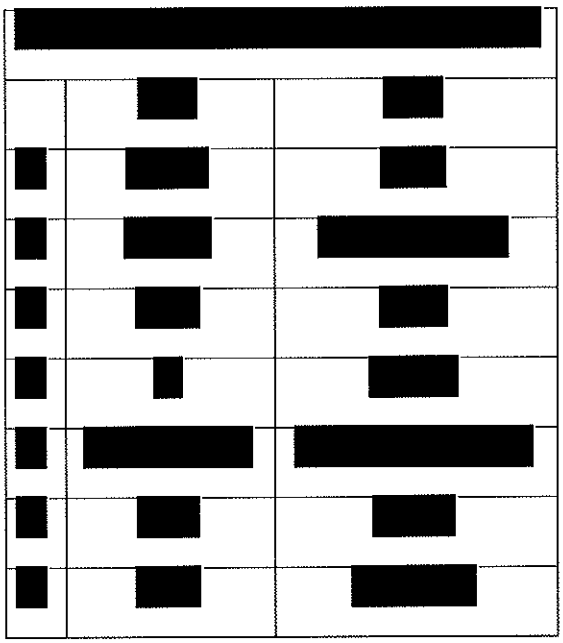

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Quitman, FL (Tallahassee, FL DMA) – Between 2010 and 2011, Comcast placed CNBC on channel {{[redacted]}} and MSNBC on channel {{[redacted]}} so that they could be in a news neighborhood on the Quitman headend with CNN (which was moved from channel {{[redacted]}} to channel {{[redacted]}}), Fox

[217] *See* Ex. I.

[218] *See Id.*

[219] *See* Answer, ¶ 73.

[220] *See* Ex. I.

News (which was moved from channel {{[redacted]}} to channel {{[redacted]}}), and HLN (which was moved from channel {{[redacted]}} to channel {{[redacted]}}).[221]

At the same time, Comcast moved the Golf Channel from channel {{[redacted]}} to channel {{[redacted]}} and Comcast SportsNet from channel {{[redacted]}} to channel {{[redacted]}} so that they could be located in a sports neighborhood with Sun Sports, Fox Sports Florida, and ESPN2, which were moved to channels {{[redacted]}}, {{[redacted]}}, and {{[redacted]}}, respectively.[222] In order to create these new news and sports neighborhood, Comcast chose to relocate TBS and Turner Classic Movies,[223] two of the networks that it specifically complains about potentially having to move if the news neighborhooding condition is implemented,[224] as well as such popular networks as the Disney Channel, Nickelodeon, and Lifetime.[225]

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[221] *See* Ex. I

[222] *Id.*

[223] *See id.*

[224] *See* Answer, ¶¶ 73-74.

[225] Similarly, in 2008, Comcast moved the Golf Channel, which it owns, from Channel 65 to Channel 31 in Pittsburgh so that it would be positioned next to other sports channels. MSNBC was previously located on Channel 31, and was moved to Channel 183. *See* Dec. 8, 2010 Ex Parte at 6.

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Comcast's argument about the harms associated with displacing "popular networks" is also seriously undermined by the number of times that it moved such networks from 2010 to 2011. In channel positions below 100, for example, Comcast moved: (1) the History Channel ninety-one

[226] *See* Ex. I

[227] *See id.*

times;[228] (2) TBS twenty-seven times;[229] (3) the Cartoon Network twenty-six times;[230] (4) USA twenty-three times;[231] (5) Comedy Central twenty times;[232] (6) AMC and Bravo nineteen times;[233] (7) FX sixteen times;[234] (8) the Discovery Channel eleven times;[235] and (9) ESPN ten times.[236] Significantly, these changes were voluntarily made by Comcast and did not result from any Commission mandate.

Moreover, Comcast has moved its own affiliated channels from channel positions above 100 to channel positions below 100 many times in the past year. This has happened seventy-seven times with respect to ShopNBC and ten times with respect to G4.[237] Indeed, on the Athens, VT headend in the Boston DMA, MSNBC was recently placed on channel {{[redacted]}} (while also retaining its prior position at channel {{[redacted]}}).[238] In sum, as longtime cable industry executive Don Mathison explains, the data "shows conclusively that Comcast has in general changed channel lineups frequently, and in particular, has done so to reorganize channels over the last year so that news and sports content affiliated with Comcast appears in the principal news and sports neighborhoods. Comcast has done this to put affiliated news and sports content in the neighborhoods that contain the major news and sports channels respectively." *See* Ex. E, ¶ 20.

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[228] Ex. A, ¶ 110.

[229] *Id.*

[230] *Id.*

[231] *Id.*

[232] *Id.*

[233] *Id.*

[234] *Id.*

[235] *Id.*

[236] *Id.*

[237] *Id.*

[238] *Id.* at n.18.

B. Comcast Dramatically Overstates the Burdens Imposed by Implementing the News Neighborhooding Condition

Given how often Comcast relocates networks on its headends, including those placed between channels 1-99, it should come as no surprise that Comcast in its Answer dramatically overstates any burdens that would be associated with implementing the news neighborhooding condition as written.

To begin with, Comcast's claim that "substantial physical engineering work" would need to be performed "at each affected system headend each time a relocation was required" is inaccurate.[239] While Comcast's Answer refer to channels 1-99 as "analog,"[240] it has completed migrating approximately {{[redacted]}} percent of its expanded basic channel lineups to digital.[241] And on those headends where the digital conversion has been completed, it would be exceptionally easy from a technical perspective for Comcast to move BTV into existing news neighborhoods and relocate any other channels as required. As industry expert Adam Goldberg explains, moving a network in digital format "from one channel position to another is not complicated from an engineering perspective."[242] This is because "channel numbers displayed to users in a digital cable television system are unrelated to the frequency used to transmit the audiovisual content to users."[243] As a result, changing the channel number of a network (such as BTV) can be accomplished simply by

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[239] Answer, ¶ 85.

[240] *Id.*, ¶ 21.

[241] Answer, Ex. 3, ¶ 20. Once a system is converted to digital, only 20-30 channels remain in analog format. Derek Harrar, *Going "All Digital" - Tons more HD and a Faster Internet*, Comcast Voices (May 1, 2009), http://blog.comcast.com/2009/05/going-all-digital-tons-more-hd-and-a-faster-internet.html; Comcast Corp., *1st Quarter 2009 Results*, Investor Relations: Events & Presentations, 10 (Apr. 30, 2009), http://files.shareholder.com/downloads/CMCSA/1246461593x0x299980/14788882-8cdb-4355-89d3-fc3dd49e518a/1Q_2009slides.pdf.

[242] Ex. G, ¶ 14.

[243] *Id.*

changing software settings in the devices that update and maintain the "system information" for the cable system.[244] Such updates are both common and simple.[245]

Even for the {{[redacted]}} of Comcast headends where existing news neighborhoods are currently carried in analog format, it would take minimal engineering work to relocate BTV and make any other necessary channel changes. Specifically, moving a network from one channel position to another under such circumstances only involves slight changes to a system's channel distribution configuration. Such changes may involve software configuration changes or at most could involve physically swapping a pair of cables at a headend.[246] In short, Adam Goldberg explains that "changing channel positions in an analog environment is still relatively simple from an engineering perspective. The changes necessary to move analog channels within the lineup may involve a small amount of operational work to reconfigure system information or swap cables at headends, but do not require widespread or overly burdensome engineering tasks."[247]

Indeed, Comcast does not provide any substantiation for its contention that "substantial physical engineering work" would need to be performed whenever any channel relocation occurred on any headend. Rather, the Declaration submitted by its own Vice President of Video Services states: "Typically there are minimal physical engineering changes associated with channel realignments on any given system . . . ."[248]

Comcast also contends that many broadcast stations with must-carry rights are located between channels 1-99, and that relocating such stations "is out of the question."[249] This argument,

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[244] *See id.*, ¶ 17.

[245] *See id.*, ¶ 18.

[246] *See* Ex. G, ¶ 20.

[247] *Id.*, ¶ 21.

[248] Answer, Ex. 3, ¶ 20.

[249] *Id.*, ¶ 72.

however, is a red herring. Broadcast stations are generally not located near the news neighborhoods identified by Bloomberg in its Complaint. Indeed, Comcast in its Answer does not provide *a single example* of a headend where the presence of a must-carry broadcast station would prevent Comcast from moving BTV into existing news neighborhoods. As such, the Commission should not take Comcast's objection seriously.

In addition, Comcast argues that if it is required to move BTV into existing news neighborhoods, it will also have to move many other independent news channels into those neighborhoods, thus compounding the burdens associated with channel relocations. Specifically, Comcast claims that, on the headends identified by Bloomberg, there are an average of {{[redacted]}} independent news channels besides BTV that would need to be moved.[250] It does not, however, claim that any of these channels have asked to be relocated pursuant to the news neighborhooding condition in the approximately seven months that it has been in effect. Comcast's figure, moreover, is quite exaggerated for two reasons. First, as reviewed above, Comcast in its Answer significantly over-counts on the number of news channels on its headends,[251] and thus also significantly overstates the number of independent news channels that it carries. Second, the substantial majority (between {{[redacted]}}) of the {{[redacted]}} independent news channels per headend other than BTV counted by Comcast[252] are C-SPAN, C-SPAN2 and C-SPAN3 (the "C-SPAN Channels"),[253] and it is highly questionable whether those networks, which were created by and are controlled by cable operators, qualify as independent news channels for purposes of the news neighborhooding

[250] *See* Answer, ¶ 75.

[251] *See supra* Section III.A.3.

[252] *See* Answer, ¶ 75.

[253] In the 369 headends at issue, C-SPAN is carried 262 times outside of the news neighborhood in which Bloomberg is requesting that BTV placed. The figures for C-SPAN 2 and C-SPAN 3 are 324 and 337, respectively. *See* Ex. A, ¶ 70. Accordingly, the C-SPAN networks are carried, on average, on {{[redacted]}} channels outside of the relevant neighborhoods in these 369 headends, which is {{[redacted]}} of Comcast's {{[redacted]}} figure.

condition. Third, as set forth below, it is unlikely that there will be a new, independent news channel in the near future, given the capital investment required for such a programming channel.

To be clear, the C-SPAN Channels provide a valuable public service by airing live coverage of the United States House of Representatives and Senate, candidate speeches and debates, press conferences and other public affairs programming.[254] C-SPAN, however, is "a private non-profit service of the cable industry" and is run by a Board of Directors that is "comprised of executives from large and small cable television operating companies."[255] Most importantly, for present purposes, Neil Smit, President of Comcast Cable Communications, LLC, currently sits on C-SPAN's Board of Directors.[256] To qualify as an independent news channel and thus benefit from the news neighborhooding condition, a network must be unaffiliated with Comcast, and the FCC Order does not provide a specific definition of affiliation. Nevertheless, given Comcast's close ties to C-SPAN, there is a strong possibility that the C-SPAN Channels do not qualify as an independent news channels, and Comcast is free to make that argument should C-SPAN ever seek to benefit from the news neighborhooding condition.[257] Indeed, given Comcast's relationship with C-SPAN, it would be rather surprising if C-SPAN chose to provoke a confrontation with Comcast by even raising the issue.

In a related argument, Comcast expresses the fear that a plethora of new independent news channels will be come into existence while the news neighborhooding condition is in effect and

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[254] Steven Waldman and the FCC Working Group on Information Needs of Communities, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, June 2011, *available at* http://www.fcc.gov/info-needs-communities.

[255] *See* Complaint, ¶ 46.

[256] *Id.*

[257] The board of director's position in a cable company or a broadcast station makes the director's interest attributable and likely triggers affiliation. *See* 47 C.F.R. § 73.3555 note 2(g).

could serve as "an ongoing source of incessant and increasing disruption."[258] Based on the substantial barriers to entry present in the cable news business, however, the likelihood that a multitude of new independent news networks will be created over the next six-and-a-half years (or that many networks of other genres will become news channels) is quite small.[259]

While Comcast also raises the prospect that the company may choose to spin off one of its news channels, thus turning into an independent news channel,[260] this is not a valid concern. To begin with, whether Comcast chooses to spin off one of its news channels is a matter entirely within Comcast's control, and the company can factor into any such decision the possibility that the news neighborhooding condition may apply to such a channel. Moreover, Comcast is free to argue to the Commission that a news channel affiliated with Comcast as of the date of the merger may not be considered an "independent news channel" for the life of the news neighborhooding condition.

C. Any Burdens Imposed by the News Neighborhooding Condition Are Quite Manageable

While Comcast substantially exaggerates any disruptions associated with implementing the news neighborhooding condition as written, Bloomberg does not deny that some costs and burdens may result. Experience strongly suggests, however, that they are likely to be quite manageable. *See*

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[258] Answer, ¶ 76.

[259] In its recent Future of Media Report, the FCC found that barriers to entry were reduced for news on the internet, but made no similar finding with respect to more traditional news, including cable television news. Steven Waldman and the FCC Working Group on Information Needs of Communities, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, June 2011, *available at* http://www.fcc.gov/info-needs-communities. Large investments are required to put together a newsgathering operation. In fact, Fox Business Channel, the last major business news network to launch, has been in operation for nearly four years and has yet to turn a profit. The State of the News Media 2011: An Annual Report on American Journalism, Cable: By the Numbers, *available at* http://stateofthemedia.org/2011/cable-essay/data-page-2/ (last visited Aug. 28, 2011). In 2006, SNL Kagan {{ [redacted] }} Derek Baine, *Fox News cuts Deal with Cablevision*, SNL Kagan: Economics of Networks, Oct. 24, 2006, *available at* http://www.snl.com/interactivex/article.aspx?id=5766917&KLPT=6 (subscription required).

[260] *See* Answer, ¶ 76.

Ex. C, ¶ 36. Industry executive Susan Arnold states that in her experience, "changes to channel lineups did not create a troubling call volume [from customers] if the proper marketing and consumer communications actions were taken in advance of, and concurrently to, those lineup changes." Ex. F, ¶ 29. Indeed, if Comcast can successfully implement over 10,000 channel changes from 2010 to 2011, including over 1,700 movements between channels 1-99,[261] then it is quite capable of handling any channel relocations that will be necessary to comply with the news neighborhooding condition. Indeed, many of the costs identified by Comcast (*e.g.*, notifying customers, printing new channel lineups, changing databases) would be incurred whenever Comcast added, dropped, or moved a channel, and in the same eleven-month period, Comcast did one of those three things at least 48,400 times.[262] Furthermore, Comcast should not be allowed to carry out channel relocations between channels 1-99 that work to the benefit of its affiliated channels (*e.g.*, CNBC, MSNBC, Versus, G4, and the Golf Channel),[263] and then claim that such channel relocations are too burdensome when they are required by the news neighborhooding condition.[264]

Any costs and burdens imposed upon Comcast, moreover, must be considered in light of the size of the company and the record of the Comcast/NBCU transaction. While Comcast claims

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[261] *See supra* Section IV.A.

[262] *See* Ex. A, ¶¶ 102, 106.

[263] *See supra* Section IV.A.

[264] While Michael Egan claims that Comcast's agreements with other networks might have to be renegotiated in order for it to comply with the news neighborhooding condition, *see* Answer, Ex. 4, ¶ 40, the Commission and Bloomberg both requested during the merger proceeding that Comcast produce its carriage agreements. In re Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc., For Consent to Assign Licenses and Transfer Control of Licenses, *Information and Discovery Request for Comcast Corp.*, MB Docket No. 10-56 (released May 21, 2010); Letter from Stephen Diaz Gavin, Counsel for Bloomberg L.P., to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 16, 2010). Bloomberg, in particular, asked that Comcast comply with the Commission's request for such agreements in order to assess Comcast's claim that those agreements could impede Bloomberg from complying with a neighborhooding condition. Letter from Stephen Díaz Gavin, Counsel for Bloomberg L.P., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 21, 2010). Notably, Comcast never produced any such agreements (nor have they presented any such agreements in this proceeding).

that relocating BTV will cost the company {{[redacted]}},[265] the merged entity has been valued at over $37 billion.[266] CNBC alone has been estimated to earn between $300 and $400 million a year.[267] Meanwhile, the company has been thriving since the merger. Comcast's second quarter 2011 revenue increased by 50.5% from the second quarter of 2010 (in part due to the NBCU purchase), and NBC Universal's revenue increased by 17.1% during the same time period.[268] Moreover, Comcast argued to the Commission that the merger would result in significant cost reductions for the two companies.[269] Thus, even if Comcast's cost estimates were correct, the costs associated with channel relocations are quite small and manageable when compared to the size of the company and the benefits that it received because of the Commission's approval of the Comcast-NBCU merger.[270]

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[265] *See* Answer, ¶ 85. Comcast in its Answer and supporting materials nowhere provides a specific cost breakdown to justify this estimate.

[266] The Comcast/NBCU entity was valued at $37.25 billion when the deal was announced on December 3, 2009. Comcast Corporation, Comcast and GE to Create Leading Entertainment Company, Investor News (Dec. 3, 2009), http://www.cmcsk.com/releasedetail.cfm?ReleaseID=427988.

[267] *See* Complaint at 5 n.7.

[268] Comcast Corp., *Comcast Reports 2nd Quarter 2011 Results*, Investor News (Aug. 3, 2011), http://www.cmcsk.com/releasedetail.cfm?ReleaseID=596297.

[269] Comcast Corp.'s, General Electric Co.'s, and NBC Universal Inc.'s Applications and Public Interest Statement, In re Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc., For Consent to Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56, at 70 (filed Jan. 28, 2010).

[270] Comcast also complains that implementation of the news neighborhooding condition would burden its First Amendment rights. *See* Answer, ¶¶ 37-38. Comcast, however, is precluded from raising this argument. Because Comcast accepted the Commission's grant with the news neighborhooding condition instead of utilizing the administrative hearing process set forth in the Commission's regulations, it is now precluded from challenging that condition. *See* 47 CFR § 1.110; *Cent. Television v. FCC*, 834 F.2d 186 (D.C. Cir. 1987). While Comcast maintains that the Commission should not substitute its judgment of what type of channel groupings are "significant" and which channels are "news" channels for Comcast's and warns the Commission against attempting to distinguish between different types of networks, *see* Answer, ¶ 37, Comcast agreed to allow the Commission to take these steps when it accepted the news neighborhooding condition. Furthermore, while Comcast claims that "governmental requirements mandating carriage must be

With respect to any impact on Comcast's customers, there is no reason to believe that such confusion will be any worse than has been the case with respect to the thousands of channel changes that Comcast has recently implemented, including those that had the effect of benefitting its affiliated channels. Additionally, Comcast ignores the value of neighborhooding for consumers. In the long run, its customers will benefit from an expanded news neighborhood where more channels will be organized by genre.[271] As industry expert David Goodfriend explains, "the addition of other news channels into the existing neighborhoods on Comcast headends will be a benefit to consumers as it will become a larger neighborhood with news channels grouped more logically and news channels easier to find." Ex. C, ¶ 36.

D. Any Burdens Associated with the News Neighborhooding Condition Were Not Unforeseen by the Commission

During the merger proceeding, Comcast and Bloomberg forcefully disputed the burdens associated with channel relocations. Comcast argued that a neighborhooding condition would impose substantial burdens upon the company, and that customer confusion would result from channel lineup changes.[272] Bloomberg countered that Comcast's arguments were disproven by the

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subject" to heightened First Amendment scrutiny, *id.*, the news neighborhooding condition does not require Comcast to carry any additional channels on its headends, and Bloomberg has not asked that BTV be added to any Comcast headend on which it is not currently being carried. Finally, it is well settled that regulation by the Commission of MVPDs' programming selection practices in order to deal with barriers to effective competition passes First Amendment scrutiny. *See generally Cablevision Sys. Corp. v. FCC*, Case No. 10-1062 (D.C. Cir. Jun. 10, 2011), at 27-28; In re Revision of the Commission's Program Carriage Rules; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage, *Second Report and Order*, FCC 11-119, ¶ 32 (2011) (noting that the Commission's program carriage rules are consistent with the First Amendment).

[271] Letter from Stephen Díaz Gavin, Counsel for Bloomberg, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56, at 3 (filed Sept. 30, 2010).

[272] *See* Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket 10-56, at 2 n.4 (Nov. 22, 2010) (pointing out that Comcast's factual and economic evidence demonstrates that neighborhooding is not an "easy-to-implement" solution that "can be accomplished with minimum disruption to customers"); Letter from Michael H. Hammer, Willkie Farr & Gallagher

evidence that Comcast changes its channel lineup often,[273] and that "[a]ny resulting confusion would be quickly remedied by the ease with which consumers would find channels once they are organized more logically."[274]

Comcast now argues that Bloomberg's interpretation of the news neighborhooding condition is flawed because it is inconsistent "with the Commission's intent to minimize disruptions to consumers and other programming networks."[275] However, as reviewed above, Comcast is unable to point to any passage of the FCC Order where the Commission expressed such an intent. Rather, when discussing the news neighborhooding condition, the Commission emphasized the importance of news programming to the public interest.[276] Comcast attempts to explain away the absence of any support in the FCC Order for its argument by contending that "if the Commission had believed that it was adopting a condition that would trigger the disruption, costs, and consumer confusion described [in the Answer], it would have addressed that in some way—especially since Comcast pointed much of this out on the record."[277] This argument, however, presupposes that the Commission actually believed that relocating independent news channels would impose the burdens described by Comcast. There is no indication in the FCC Order, however, that the Commission agreed with Comcast's description of these burdens rather than Bloomberg's arguments that such

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LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (Oct. 22, 2010) (arguing that neighborhooding would cause significant disruption for other programming networks, "confuse and upset consumers loyal to the moved networks," and result in increased costs and burdens); Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56, at 2 (Aug. 13, 2010) (stating that "changing channel line-ups is very difficult" and generates "consumer confusion and dissatisfaction").

[273] Dec. 8, 2010 Ex Parte at 6.

[274] *Id.*

[275] *See* Answer, ¶ 36.

[276] *See* FCC Order at 4287, ¶ 122.

[277] *See* Answer, ¶ 87.

burdens would be minimal. Indeed, the Commission may not have addressed the alleged burdens associated with channel changes precisely because the record in the merger proceeding was replete with evidence that Comcast changed its channel lineups often.

Furthermore, to the extent that the Commission's silence on the cost issue favors either party in this dispute (as opposed to being a neutral factor), that silence weighs on Bloomberg's side of the scales. This is because if the Commission had decided against imposing a meaningful news neighborhooding condition upon Comcast because of concern about the disruptions caused by channel relocations, it would have expressed that concern at some point in the FCC Order.

In the end, Comcast clings to the Commission's description of the news neighborhooding condition as "narrowly tailored" as evidence that the Commission did not wish to require Comcast to relocate any channels. Such an intent, however, is nowhere expressed in the FCC Order. Rather, paragraph 122 of the Order makes clear that the news neighborhooding condition is "narrowly tailored" because it does not represent "a requirement that Comcast affirmatively undertake neighborhooding" but rather only obligates the company to place independent news channels in existing news neighborhoods and those it chooses to create in the future.[278] Additionally, under Bloomberg's interpretation of the news neighborhooding condition, the Commission's description of that condition as "narrowly tailored" is apt for at least two other reasons: (1) it does not apply to any programming genre but news; and (2) it only benefits a subcategory of news channels ("independent news channels") rather than all news channels.[279] By contrast, the Commission could have recommended more widespread neighborhooding in order to ameliorate anticompetitive

[278] *See* FCC Order at 4287, ¶ 122.

[279] While Bloomberg's interpretation of the news neighborhooding condition renders it narrowly tailored, Comcast's interpretation would render it a nullity. *See supra* Section III.D.

behavior, as the Enforcement Bureau recently recommended as an option in a program carriage complaint.[280]

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At the end of the day, the Commission should not allow Comcast to use this proceeding as a forum for relitigating the merits of the news neighborhooding condition. While Bloomberg has demonstrated that Comcast has substantially exaggerated the alleged burdens associated with implementation of the condition, this issue is really beside the point. The Commission adopted the news neighborhooding condition, Comcast accepted it, and the Commission must now enforce it as written. Comcast's policy arguments do not alter the meaning of the condition. They do not turn the meaning of "now or in the future" into "the future." Neither do they turn the meaning of "a significant number or percentage" of news channels into "all or a substantial majority" of news channels.

V. THE COMPLAINT SHOULD NOT BE SENT TO AN ADMINISTRATIVE LAW JUDGE

Before Bloomberg may obtain any relief from the Commission, Comcast asks that the Complaint be designated for hearing before an administrative law judge.[281] This request is little more than a transparent and cynical maneuver designed to delay the resolution of the case and run

[280] In re Tennis Channel, Inc. v. Comcast Cable Commc'ns., LLC, MB Docket No. 10-204 File No. CSR-8258-P (July 8, 2011) ("The Bureau recommends that the Presiding Judge should also direct Comcast to end its discrimination in terms of channel placement: the Presiding Judge should either require Tennis Channel to be carried on a channel proximate to Golf Channel or Versus as Tennis Channel requests or should require Comcast to create a 'sports neighborhood' (similar to the 'news neighborhood' required by the *Comcast Merger Order*) and require that Tennis Channel be located in the same neighborhood with Golf Channel and Versus"). *Id.* at 16.

[281] *See* Answer, ¶ 99.

down the clock on the time period during which Comcast must comply with the news neighborhooding condition.[282]

Pursuant to the FCC Order, the news neighborhooding condition will be in effect for seven years,[283] and due to Comcast's refusal to abide by the condition, more than seven months (or almost ten percent of this time period) has already gone by without Bloomberg receiving any benefit from it. Should this case be referred to an administrative law judge, it is almost certain that far more time will elapse before Bloomberg will be able to obtain relief and Comcast will be required to comply with the news neighborhooding condition. For example, the Bureau referred the WealthTV program carriage complaints to an administrative law judge in October 2008 yet the Commission did not act on the ALJ's Recommended Decision until June 2011.[284] Similarly, the Bureau designated the Tennis Channel's program carriage complaint for hearing on October 5, 2010,[285] and more than ten months later, the administrative law judge has not yet even issued a Recommended Decision. This means that the Commission will not address that Recommended Decision until at least 2012. Given this history, should the Bureau refer Bloomberg's Complaint to an administrative law judge, it will virtually guarantee that about two to three years of the seven-year period in which the news neighborhooding condition will be in effect will go by before Comcast will be required to comply with it.

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[282] Comcast presents the Commission with two possibilities: (1) dismissing or denying Bloomberg's Complaint based on the arguments presented in its Answer; or (2) referring the case to an administrative law judge. Nowhere does Comcast justify this "heads I win, tails you lose" approach. If the issues presented in this case are of a nature that can be resolved in Comcast's favor without being referred to an administrative law judge, then they can also be resolved in Bloomberg's favor without such a referral.

[283] *See supra* note 7.

[284] In re Herring Broadcasting Inc., d/b/a WealthTV, et al., *Memorandum Opinion and Order,* 26 FCC Rcd 8971 (2011); In re Herring Broadcasting Inc., d/b/a WealthTV, et al., *Memorandum Opinion and Hearing Designation Order*, 23 FCC Rcd 14787 (MB 2008).

[285] In re Tennis Channel, Inc. v. Comcast Cable Commc'ns, LLC, *Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 25 FCC Rcd 14149 (MB 2010).

Aside from allowing Comcast to substantially reduce the time period during which it will be required to abide by the news neighborhooding condition, referring Bloomberg's Complaint to an administrative law judge is also wholly unnecessary. As reviewed above, this case revolves around two simple legal and policy questions. First, does the news neighborhood condition apply "now or in the future" or only to neighborhoods created after the date of the FCC Order? And second, are the channel groupings identified by Bloomberg neighborhoods pursuant to the terms of the condition or must a neighborhood have 10 or more channels and contain at least seventy percent of news channels as Comcast contends? The first question presents a straightforward legal issue that the Commission is in the best position to answer, and the second issue is best resolved by the Commission as well because it centers on what kind of channel groupings the Commission intended for its definition of neighborhood to cover.

To be sure, Comcast raises a litany of issues that it would like for an administrative law judge to examine in this proceeding.[286] However, to the extent that they are not covered by the two questions set forth above, they are irrelevant to the outcome of this proceeding and amount to an attempt to send the parties and an administrative law judge on a wild-goose chase to delay the resolution of Bloomberg's Complaint. For example, in order to determine whether Comcast is failing to comply with the news neighborhooding condition, the Commission need not determine the identity of any non-news channels that might have to be displaced in order for Comcast to abide by the condition.[287] Neither the identity of those channels nor any burdens that may be imposed on them by relocating are relevant to whether Comcast is complying with the language contained in the news neighborhooding condition. Neither is it necessary for the Commission to determine which "broadcast channels with must-carry rights stand in the way of Bloomberg's desired channel

[286] *See* Answer, ¶ 99.

[287] *See id.*

placement."[288] This is especially true given that Comcast has not pointed to a single example in the 368 channel groupings identified by Bloomberg in its Complaint where must-carry rights present a problem.

Moreover, it does not matter here what channels other than BTV may be independent news channels;[289] that can be decided in future cases if other channels believe they are entitled to relief under the news neighborhooding condition. What is important for purposes of this case is that Comcast does not dispute that BTV qualifies as an independent news channel. Finally, as explained above, the Commission does not have to resolve here whether there is "an industry standard or practice regarding what constitutes news neighborhooding."[290] The Commission set forth a specific definition of the term in the news neighborhooding condition, and that definition governs in this proceeding. While, as reviewed above, Bloomberg believes that the Commission's definition is consistent with industry practice, that issue, in the end, is not outcome determinative because it is the definition adopted by the Commission that matters.

In sum, the Commission is in the best position to interpret the meaning of the conditions that it places on mergers, not an administrative law judge. This is why the Commission regularly decides for itself the meaning of a condition and/or whether a party has violated a condition. *See, e.g.*, *In re Comcast Corporation, Petition for Declaratory Ruling that The America Channel is not a Regional Sports Network*, Order, 22 FCC Rcd 17938, 17946 (2007) (determining that The America Channel was a regional sports network for purposes of a condition contained in the *Adelphia Order*); *In re CoreComm Commc'ns, Inc., and Z-Tel Commc'ns, Inc., Complainants, v. SBC Commc'ns, Inc., et al., Defendants*, Memorandum Opinion and Order, 18 FCC Rcd 7568, 7578 (2003) (granting Section 208 complaint

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[288] *Id.*

[289] *See id.*, ¶ 99.

[290] *Id.*

because incumbent local exchange carriers did not offer shared transport for IntraLATA toll traffic as required by a merger condition); *In re SBC Communications, Inc.; Apparent Liability for Forfeiture,* Forfeiture Order, 17 FCC Rcd 19923, 19923 (2002) (holding SBC liable for a $6 million forfeiture for failing to offer shared transport under terms and conditions required by the SBC/Ameritech Merger Order); *Global NAPs, Inc., Complainant, Verizon Commc'ns, et al., Defendants,* Memorandum Opinion and Order, 17 FCC Rcd 4031, 4031 (2002) (granting Section 208 complaint because Verizon refused to permit a telecommunications carrier to opt into certain provisions of an interconnection agreement as required by a merger condition); *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, To AT&T Corp. Transferee,* Order, 16 FCC Rcd 456, 457 (2000) (finding that AT&T's letters did not satisfy a merger condition requiring the company to elect one of three Video Condition compliance options).

The Commission should do the same here. It is in the best position to determine whether Comcast is violating the news neighborhooding condition and also to provide Bloomberg with timely relief, a critical factor in this proceeding given the time-limited nature of the condition in question.[291]

VI. THE COMMISSION NEED NOT OPINE ON VARIOUS REMEDIAL QUESTIONS POSED BY COMCAST

Comcast raises a host of questions concerning remedies the Commission may impose to ensure compliance with the news neighborhooding condition that are not implicated by this case.[292] As such, the Commission need not and should not address them in this proceeding. Rather, it

[291] Similarly, there is no need to consider the Declaration of Jennifer Gaiski, Exhibit 2 to the Answer. Ms. Gaiski's Declaration deals essentially with the history of the carriage of BTV on Comcast systems and past negotiation history. It is irrelevant to the Complaint, which is premised upon the neighborhooding condition contained in the FCC Order, which is subsequent to the matters raised in her Declaration. The Commission should disregard it in its entirety.

[292] *See id.*, ¶¶ 100-101.

should resolve these issues if they become the subject of dispute in a future case.[293] Alternatively, Comcast may file a petition for declaratory ruling seeking the answers to its questions.

First, Comcast asks whether independent news networks must be moved into news neighborhoods if they would prefer not to be moved.[294] This case, however, does not involve the relocation of an independent news channel against its will so that question is not relevant to this case. Comcast relatedly wonders whether an independent news channel has one opportunity to decide to move or multiple opportunities over the seven-year term of the condition.[295] Here, Bloomberg promptly asked Comcast to move BTV in order to comply with the news neighborhooding condition so the Commission need not consider whether an independent news channel may decline to be moved and then change its mind.

Second, Comcast asks whether SD networks have a right to be in an HD neighborhood.[296] As stated above, Bloomberg is not asking for BTV's SD feed to be included in any HD neighborhoods carried by Comcast so this issue is irrelevant to this case. Relatedly, Comcast asks whether SD and HD news channels must be combined into one neighborhood. Again, Bloomberg is not requesting such relief so this inquiry is irrelevant to this case. Moreover, Bloomberg sees no basis in the text of the condition to require Comcast to combine all SD and HD feeds of all news channels into a single neighborhood.

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[293] *See Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1972) *cert. denied*, 414 U.S. 914 (1973) (recognizing "the Commission's long standing policy of refusing to issue interpretative rulings or advisory opinions whenever the critical facts are not explicitly stated or there is a possibility that subsequent events will alter them.") (citing Use of Broadcast Facilities by Candidates for Public Office, *Public Notice*, 24 FCC.2d 832, 855 (1970) ("In general, the Commission . . . . prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for decision")).

[294] *See* Answer, ¶ 100.

[295] *See id.*

[296] *See id.*

Third, Comcast asks whether it is required to "collapse all news channels into a single neighborhood."[297] Again, Bloomberg has made no such request here so the Commission does not have to decide that question in this proceeding. Comcast also asks whether, if only one neighborhood is permitted, "its placement in the channel lineup [is] within Comcast's editorial discretion?"[298] This hypothetical question is also not implicated by this proceeding. Bloomberg has not asked Comcast to collapse all news channels into a single neighborhood, let alone questioned the placement of that single neighborhood on Comcast's channel lineups.

Fourth, Comcast asks about the appropriate time period for implementing the relocation of independent news channels, and in particular, whether that time period would be "consistent with LFA notice requirements."[299] In its Complaint, Bloomberg asked the Commission to require Comcast, within sixty days, 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 top 35 most-populous DMAs that carries BTV.[300] Comcast in its Answer neither raises any specific objection to this sixty-day time period nor claims that it is inconsistent with LFA notice requirements. Accordingly, should the Commission decide that Comcast is violating the news neighborhooding condition, Comcast has waived its right to contest Bloomberg's request for relief to be provided within sixty days.

Fifth, Comcast asks whether there are guidelines for the possible displacement and relocation for other networks that may be caused by the news neighborhooding condition and whether those networks have any right to object to implementation of the condition.[301] It is up to Comcast, not

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[297] *Id.*

[298] *Id.*

[299] *Id.*

[300] *See* Complaint at Section VIII.e.

[301] *See* Answer, ¶ 100.

the Commission, to deal with any networks that may need to be relocated for Comcast to bring itself into compliance with the news neighborhooding condition. The news neighborhooding condition neither contains any such guidelines, nor does it give other networks any veto power over implementation of the condition. As reviewed above, Comcast has implemented thousands of channel changes over the course of the past year so any claim that the company requires guidelines for handling such changes is not credible.

Finally, Comcast asks whether it is required to place BTV in multiple news neighborhoods.[302] As explained above,[303] Bloomberg believes that the news neighborhooding condition requires Comcast to place BTV in any standard definition neighborhood that exists on a Comcast headend. However, in those instances where two standard definition news neighborhoods exist on a Comcast headend, Bloomberg is content to be carried only in the neighborhood that includes CNBC.

VII. CONCLUSION

For all of the foregoing reasons, the Commission should expeditiously grant the relief requested by Bloomberg in its Complaint:

(a) Find that Comcast carries news channels in neighborhoods;

(b) Find that Comcast has willfully refused to place BTV in news neighborhoods on its systems;

(c) Find Comcast in violation of the news neighborhooding condition in the FCC Order (Section II.2 of Appendix A);

(d) Declare that the news neighborhooding condition requires Comcast to place BTV in any channel grouping containing at least four news channels within a block of five adjacent channel positions;

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[302] *See id.*

[303] *See supra* Section III.D.

(e) Require Comcast, within sixty days, 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 top 35 most-populous DMAs that carries BTV (listed in Exhibit G to the Complaint and Exhibit H of this Reply); and

(f) Any other relief the Commission finds appropriate.

Respectfully submitted,

BLOOMBERG L.P.

By_____

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Its Counsel

Dated: August 30, 2011

FOR PUBLIC INSPECTION

VERIFICATION

I, Stephen Díaz Gavin, do declare and hereby state under penalty of perjury, as follows:

1. I am Counsel for Bloomberg L.P.
2. I have read the foregoing Reply of Bloomberg L.P. to Answer of Comcast Cable Communications, LLC. To the best of my knowledge, information, and belief, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. It is not interposed for any improper purpose.

August 30, 2011

Stephen Díaz Gavin
Counsel for Bloomberg L.P.

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Washington, DC 200037

CERTIFICATE OF SERVICE

I, Matthew Berry, do hereby certify that copies of the attached "Bloomberg Response to Answer of Comcast Cable Communications, LLC" were served on the parties listed below by first-class mail, postage prepaid, this 30th day of August 2011:

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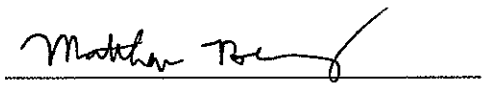

Matthew B. Berry

5188669

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EXHIBIT A

FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Complaint of	)	
	)	
BLOOMBERG L.P.	)	MB Docket No. 11-104
	)	
v.	)	
	)	
COMCAST CABLE COMMUNICATIONS, LLC	)	
	)	
	)	
	)	

REPLY DECLARATION OF GREGORY S. CRAWFORD

I, Gregory S. Crawford, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Gregory S. Crawford. I am currently a Professor of Economics at the University of Warwick in the United Kingdom. I received a Ph.D. in Economics from Stanford University in 1998. I was an assistant professor at Duke University as well as an assistant and later associate professor at the University of Arizona.

2. In 2007-08, I served as Chief Economist of the Federal Communications Commission (the "FCC" or "Commission"), an independent Federal regulatory agency charged with regulating a number of media and communications industries, including cable and satellite television. During my time at the Commission, I provided advice related to a number of topics, including mergers, spectrum auction design, media ownership, network neutrality, and the bundling of video channels.

3. After my service at the FCC, I joined the Department of Economics at the University of Warwick in the United Kingdom as a full professor. I am also Director of Research for the University's Economics Department.

4. In 2011, I was invited to be a research fellow at the Centre for Economic Policy Research ("CEPR"), one of the leading European research networks in economics.

5. I conduct research on topics in industrial organization as well as law and economics. Much of my research has analyzed the cable and satellite television industries. Particularly relevant for this proceeding, I have published extensively at the intersection of these fields, evaluating conditions of demand and supply within the cable television industry and the consequences of regulation on economic outcomes in cable markets. I have published numerous academic articles in such outlets as the *American Economic Review*, *Econometrica*, the *RAND Journal of Economics*, and the *Journal of Law and Economics*. My works include: "The Impact of the 1992 Cable Act on Household Demand and Welfare," *RAND Journal of Economics*, v.31, n.3 (Autumn 2000), 422-49; "Monopoly Quality Degradation and Regulation in Cable Television" (with Matthew Shum), *Journal of Law and Economics*, v.50, n.1 (February 2007), 181-209; "Bundling, Product Choice, and Efficiency: Should Cable Television Networks Be Offered A La Carte?," (with Joseph Cullen), *Information Economics and Policy*, v.19, n.3-4 (October 2007), 379-404; and "The Welfare Effects of Bundling in Multichannel Television Markets," (with Ali Yurukoglu), forthcoming, *American Economic Review*. I have attached my CV as Attachment A to this Declaration.

6. When the National Bureau of Economic Research ("NBER") commissioned a volume analyzing the consequences of economic regulation across a number of American industries, I was asked to write the chapter on cable television. The NBER is the largest economics research organization in the United States. The chapter is titled, "Cable Regulation in the Satellite

Era," Chapter 5 in Rose, N., ed., "Economic Regulation and Its Reform: What Have We Learned?" forthcoming, University of Chicago Press.

7. Earlier this year, I was asked by Bloomberg L.P. ("Bloomberg") to evaluate the extent to which Comcast distributes news, business news, and/or public affairs television channels in neighborhoods on its cable systems' channel lineups.

8. I provided a declaration which was filed with the FCC on June 13, 2011, as part of a complaint by Bloomberg alleging that Comcast Cable Communications, LLC ("Comcast") has failed to implement the condition relating to news neighborhoods adopted by the Commission when it granted Comcast's application to transfer control of licenses from GE to Comcast ("the FCC Order").[1]

9. The majority of my previous declaration described patterns of Comcast's television channel carriage and placement, particularly of news channels, based on "channel lineup data" provided by Tribune Media Services (TMS). The data provided information on channel lineups for all of the major providers of multichannel video programming within the United States as of May 4, 2011.

10. Comcast replied to this complaint ("Comcast Answer") on July 27, 2011. The declarations of Michael Egan (Exhibit 4, "Egan Declaration") and Mark A. Israel (Exhibit 5, "Israel Declaration") also referenced the analysis of channel lineup data from TMS. I have read Comcast's Answer with a particular focus on the Egan Declaration and the Israel Declaration.

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[1] *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, 4358 (App. A, Sec. III.2) (2011).

11. I have since been asked by Bloomberg to evaluate several additional issues in light of the Comcast Answer. In particular, I've been asked: (1) to evaluate how designating additional channels as news channels would influence the conclusions in my previous declaration regarding Comcast's neighborhooding of news channels; (2) to analyze patterns of news channel carriage by other cable television operators, particularly Cox Communications ("Cox"), Charter Communications ("Charter"), Cablevision Systems Corporation ("Cablevision"), and Time Warner Cable ("Time Warner"); (3) to analyze patterns of sports channel carriage by Comcast and other cable operators; (4) to analyze the extent to which Comcast carries the same network in multiple channel positions on the same headend; (5) to analyze the extent to which Comcast excludes the C-SPAN family of channels from news neighborhoods that also exclude Bloomberg TV ("BTV") on headends in top 35 DMAs that carry BTV; and (6) to analyze the extent to which Comcast has changed their channel lineups between June 16, 2010 and May 4, 2011. I describe each of these tasks in turn.

12. In Attachment B to the Egan Declaration, Mr. Egan provides a list of news channels carried by the top 14 MVPDs; included in this list were a large number of broadcast multicast channels. Counsel for Bloomberg has asked me to repeat my analysis of Comcast's channel lineups in the event that 28 of the channels on that list would be counted as news channels. These 28 channels are listed below as Attachment B to this declaration.

13. There were a total of 227 instances of these 28 channels across the 1,014 Comcast headends in the raw 2011 data, adding an average of only 0.22 additional news channels per headend.

14. As in my previous analysis of the 2011 data, I resolved to keep a single channel lineup per headend (as described in paragraphs 17-20 of my previous declaration) and eliminated

any remaining instances of multiple channels being offered in the same channel position (as described in paragraphs 21-25 of my previous declaration).[2] In so doing, I included all the channels listed in Attachment B to this declaration in addition to all of those listed in Appendix B of my previous declaration.

15. This process eliminated a small number of instances of these 28 stations, yielding a total of 222 instances of these 28 channels in my final dataset, adding an average of only 0.22 additional news channels per headend.

16. As in my previous analysis of the 2011 data, I defined news neighborhoods as described in paragraphs 26-39 of my previous declaration. In so doing, I included all those news channels listed in groups (1)-(5) and (8) in Appendix B of my previous declaration as well as the 28 additional channels described above and listed in Attachment B below.

17. Having done so, I was able to compare the conclusions I drew in my previous declaration with the conclusions reached after also including the 28 channels listed in Attachment B below.

18. The addition of these 28 channels had a negligible effect on the conclusions I drew in my previous declaration.[3]

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[2] The 28 additional channels yielded 3 additional instances of multiple channels in the same channel position that involved a news channel. These were all cases of two multicast broadcast channels sharing the same channel position. In these cases, if only one was a news channel, I kept the news channel. If both were news channels, I kept the channel whose name comes first in alphabetical order.

[3] In conducting the analysis I present here, I found a small error in the Stata code underlying my earlier analysis. This error inadvertently mislabeled one set of channels that should have

19. Using the definition of news neighborhoods described in my previous declaration at paragraph 39, I previously found that out of Comcast's 1,014 headends, 677 (or 66.8%) have news neighborhoods. There is no change in the results from adding the 28 additional multicast channels listed in Attachment B.

20. There is similarly no change in many of the other conclusions I drew. In both cases:

a. 759 (74.9%) of Comcast headends carry BTV.

b. Of these, 599 (78.9%) have news neighborhoods.

c. 485 of 604 Comcast headends in the 35 most populous DMAs carry BTV and, of these, 418 (86.2%) have news neighborhoods.

d. Of these 418 Comcast headends in top-35 DMAs that carry BTV, 369 have a news neighborhood with U.S. news channels that does not include BTV. (In my previous declaration, I evaluated how many of Comcast's headends in the top-35 DMAs that carried BTV had a news neighborhood that did not include BTV.

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qualified as a 4-in-5 news neighborhood. The most noticeable effect of this error is that there is one additional Comcast headend that offers a news neighborhood. Thus, 677 (instead of 676) Comcast headends have news neighborhoods, and 369 (instead of 368) Comcast headends are located in the 35 most populous DMAs, carry BTV, and have a news neighborhood that does not include BTV. This additional headend is headend [redacted]], serving (among other communities) [redacted]] in the [redacted]].

In what follows, to allow for an apples-to-apples comparison of the effects of including the 28 channels listed in Attachment B below, I present the analysis from my previous declaration having fixed this error. As a result, the specific numbers presented here as representing the conclusions from my previous declaration may differ very slightly from the numbers actually presented in that declaration.

The answer is 369. Furthermore, all of those news neighborhoods contained U.S. news channels. Including the additional multicast channels listed in Attachment B below yielded 2 additional headends in the top 35 DMAs that carry BTV that previously did not have a news neighborhood that excluded BTV but now do. Based on an analysis of the programming offered on the news channels in these neighborhoods undertaken by counsel for Bloomberg, I can conclude that all the news channels in these 2 new neighborhoods exclusively offer foreign news content. Since Bloomberg is not requesting that BTV be added to these groupings of foreign news channels, I do not include these 2 headends in my analysis).

e. Of these 418 headends, 365 have news neighborhoods that include CNBC but not BTV, whereas only 17 have news neighborhoods that include both CNBC and BTV.

f. Of the 369 headends described in paragraph 20(d) above, 99.7% (368) include HLN in a news neighborhood that excludes BTV, 98.9% (365) include CNBC in such a neighborhood, 97.3% (359) include CNN in such a neighborhood, 93.5% (345) include Fox News in such a neighborhood, and 61.8% (228) include MSNBC in such a neighborhood.

21. The 28 additional multicast channels did not even affect the number of news channels in the 369 news neighborhoods described in paragraph 20(d). On the same headends, I found that the average news neighborhood that does not include BTV contains 5.05 news channels with or without the additional channels. The distribution of the number of news channels in such

neighborhoods was also the same in both cases: 269 of the neighborhoods have five news channels, 46 have six, 46 have four, and 8 have seven or more.

22. Indeed, the only conclusions where the additional multicast channels listed in Attachment B had any effect were the incidence of multiple news neighborhoods, the total number of news channels on the headend, and the associated share of news channels within news neighborhoods. In particular, I found that among the 369 headends in top-35 DMAs that carry BTV and have a news neighborhood that does not include BTV:

a. The analysis underlying my previous declaration found that 50 of these headends had more than one news neighborhood.[4] Adding the 28 additional channels listed in Attachment B yields, instead, 51 headends with more than one news neighborhood. In 50 of these 51, BTV is in a neighborhood located above channel 100. In both my previous and current analyses, none of these headends have more than two news neighborhoods containing U.S. news channels.

b. In my previous declaration, I found that the average such headend carried 11.03 news channels and 46.2% of news channels in a news neighborhood that did not include BTV. Furthermore, 363 of these 369 (98.4%) of these headends carried 33% or more of news channels in a news neighborhood that did not include BTV.

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[4] In my previous declaration, I focused on the 48 of these 50 headends that had a news neighborhood below channel 100 that contained CNBC and another neighborhood above channel 100 that contained BTV. There were two other headends that had two news neighborhoods, one below and one above channel 100. On these two headends, while BTV was carried in the neighborhood above channel 100, CNBC was not carried in the neighborhood below 100 (although MSNBC was).

c. Adding the additional multicast channels, I find that the average such headend carries 11.43 news channels and 44.9% of news channels in a news neighborhood that does not include BTV. Furthermore, 349 of these 369 (94.6%) headends now carry 33% or more of their news channels in such neighborhoods.

23. Counsel for Bloomberg also asked me to evaluate my conclusions under the scenario that The Weather Channel is added to the list of news channels included in my original analysis, both while maintaining a 4-in-5 definition of a news neighborhood and also extending it to a 5-in-6 definition. While these changes have more substantial effects than adding the 28 multicast channels listed in Attachment B, here too the qualitative conclusions are similar.

24. For the case of adding The Weather Channel while keeping a 4-in-5 news neighborhood definition, the greatest immediate effect is that there are now more news neighborhoods. Whereas 677 of 1,014 Comcast headends had news neighborhoods in my original analysis, adding The Weather Channel yields 699 headends that do. Among Comcast headends in top 35 DMAs that carry BTV, 369 had neighborhoods that did not include BTV in my previous analysis, and 384 do with the addition of The Weather Channel. Of these 384 headends, 58 (versus 50 in my previous analysis) have two news neighborhoods. In each of these 58 headends, there is a news neighborhood above channel 100 that includes BTV.

25. If The Weather Channel is counted as a news channel, the average number of news channels in news neighborhoods (within these 384 headends) rises to 5.73, the average number of total news channels on each headend rises to 12.05, and the average percentage of news channels in news neighborhoods that do not include BTV rises to 48.0%. 376 of these 384 headends (or 97.9%) have a share of news channels in news neighborhoods of at least 33%.

26. As expected, adding The Weather Channel and extending the definition of a news neighborhood to 5-in-6 yields fewer news neighborhoods (though not substantially fewer). Under these conditions, 574 of Comcast's 1,014 headends (56.6%) now have news neighborhoods and 347 of the 485 headends (71.5%) in top-35 DMAs that carry BTV have neighborhoods that do not include BTV. The average number of news channels in such neighborhoods on these 347 headends is 5.88, the average number of total news channels on these headends is 12.10, and the average percentage of news channels in such neighborhoods is 49.0%. 105 of these headends carry 5 news channels in such neighborhoods, 187 carry 6, and the rest (55) carry 7, 8, or 9.

27. I was also asked by counsel for Bloomberg to analyze patterns of news channel carriage among cable operators other than Comcast, particularly Cox, Charter, Cablevision, and Time Warner. These companies are, after Comcast, the four next largest cable operators in the United States.

28. I did this analysis using the same TMS data from May 4, 2011, that formed the basis of my previous declaration. I did not add the 28 multicast channels listed in Attachment B below. The steps I took for each additional MSO followed closely those that I took in obtaining channel lineups for the 2011 Comcast data (described in detail in paragraphs 10-49 in my previous declaration). In what follows, I only briefly cover the steps where they are identical to that for the 2011 Comcast data and focus my description on those few cases where the steps were different.

29. I began by merging the three raw TMS databases as I did for the 2011 Comcast analysis, but saving for each cable operator mentioned above only the headends identified as being owned by them. The result was 39,335 headend-channel positions across 86 headends for Cox, 172,062 headend-channel positions across 493 headends for Charter, 29,019 headend-channel

positions across 46 headends for Cablevision, and 433,849 headend-channel positions across 728 headends for Time Warner.

30. I next defined the set of possible news, business news, and public affairs channels that were to be the focus of my analysis. This followed the steps described in my previous declaration in paragraphs 14-16.

31. As in the 2011 Comcast data, there were again many instances of multiple channels being offered on a single channel position due to headends providing different channel lineups according to the device households were using to receive the programming. As for the 2011 Comcast data, for simplicity I decided to keep one channel lineup per headend. I followed the same rule as there: I kept the Digital (non-rebuild) lineup if one was offered and the Analog lineup if one was not.

32. For Cox, the result was 74 Digital (non-rebuild) lineups and 12 Analog lineups. For Charter, the result was 442 Digital (non-rebuild) lineups, 49 Analog lineups, and 2 Digital (rebuild) lineups.[5] For Cablevision, the result was 44 Digital (non-rebuild) lineups and 2 Analog lineups. For Time Warner, the result was 592 Digital (non-rebuild) lineups, 133 Analog lineups, 1 Digital (rebuild) lineup, and 2 Analog (rebuild) lineups.[6]

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[5] Charter had one headend with an Analog lineup and a Digital (rebuild) lineup, and one headend with an Analog lineup, an Analog (rebuild) lineup, and a Digital (rebuild) lineup. In these two cases, I selected the Digital (rebuild) lineup. This decision was made because the cable industry is migrating to all-digital systems and digital lineups are therefore more relevant for the future than are analog lineups.

[6] Time Warner had one headend with Analog and Digital (rebuild) lineups and two headends with Analog and Analog (rebuild) lineups. For the same reasons outlined above, in the first case I kept the Digial (rebuild) lineup. In the second case, I kept the Analog (rebuild) lineup because it

33. This resolved many but not all of the instances of multiple channels being offered on a single channel position. Similar to what occurred in the 2011 Comcast analysis presented in my previous declaration, for each cable operator there were a small number of channel positions (always less than 1%) for which there were multiple channels with different names reported at the same channel position on the same device.

34. As for the 2011 Comcast data, I resolved these first by dropping duplicate channels if they shared the same channel name and ignoring differences in names if none of the affected channels was a news channel.

35. After these steps, the remaining channel position conflicts were cases of multiple different channels at least one of which was a news channel. Rather than resolve these by hand (as I did in my previous declaration), I constructed an automated system to determine which channel to keep.

36. If there was only one news channel among the duplicated channels, I kept it. If there were 2 or more news channels among the duplicates, I investigated the type of news channel it was. If only one was a news channel among the 5 most widely distributed news channels (CNBC, CNN, Fox News, HLN, or MSNBC), I kept it. If there were either none or two or more such channels, I kept the news channel whose name came first in alphabetical order. This resolved all the duplicates for each of the cable operators.

37. All of these steps resulted, for each cable operator, in the final dataset on which I performed my analysis of their 2011 neighborhoods of news, business news, and public affairs

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likely represents the most technologically advanced lineup offered by that headend and is therefore the lineup closest in spirit to the Digital lineups I kept when making similar choices for other headends.

channels. For Cox, the dataset contained 32,721 channel positions on 86 headends. For Charter, the dataset contained 134,979 channel positions on 493 headends. For Cablevision, the dataset contained 24,951 channel positions on 46 headends. For Time Warner, the dataset contained 328,002 channel positions on 728 headends.

38. I next defined news neighborhoods following the steps described in paragraphs 26-39 of my previous declaration and calculated all of the same objects that were the subject of my analysis of the 2011 Comcast data (*e.g.*, the incidence of news neighborhoods, whether they included BTV, whether they included other news channels, etc.) as described in paragraphs 40-49 of my previous declaration.

39. The patterns in the carriage of news channels in news neighborhoods for other operators are similar to that seen on Comcast's lineups.

40. For Cox, 72 of its 86 headends (83.7%) carry BTV.[7] Of these headends, 36 (50.0%) have a news neighborhood below channel 100. The average number of news channels in these news neighborhoods is 4.28, the average total number of news channels on these 36 headends is 11.39, and the average share of news channels in these news neighborhoods on these 36 headends is 37.7%. Among these 36 headends, 26 (72.2%) of these news neighborhoods have four news channels and the remaining 10 (27.8%) have five news channels.

41. For Charter, 348 of its 493 headends (70.6%) carry BTV, a share that rises to 146 of 171 (85.4%) in top-35 DMAs. Of these 146 headends, 92 (or 63.0%) have a news neighborhood below channel 100. The average number of news channels in these neighborhoods on these 92

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[7] Because there is only a small sample of Cox headends that both carry BTV and are located in the top 35 DMAs, I chose to analyze all Cox headends that carry BTV.

headends is 5.01, the average total number of news channels on these headends is 10.05, and the average share of news channel in these news neighborhoods on these 92 headends is 50.3%. Among these 92 headends, 12 (13.0%) have news neighborhoods with four news channels, 68 (73.9%) have news neighborhoods with five news channels, and the balance (12) have news neighborhoods with six or more news channels.

42. For Cablevision, 44 of its 46 headends (95.7%) carry BTV (all of which are in top-35 DMAs). Of these 44 headends, 43 (or 97.7%) have a news neighborhood below channel 100. The average number of news channels in these neighborhoods on these 43 headends is 4.12, the average total number of news channels on these 43 headends is 10.07, and the average share of news channels in these news neighborhoods on these 43 headends is 40.9%. Among these 43 headends, 39 (90.7%) have news neighborhoods with four news channels, and the balance (4) have news neighborhoods with five or more news channels.

43. For Time Warner, 575 of its 728 headends (79.0%) carry BTV, as do 228 of its 305 headends (74.8%) in top-35 DMAs. Of these 228 headends, 84 (or 36.8%) have a news neighborhood below channel 100. The average number of news channels in these neighborhoods on these 84 headends is 5.15. Among these 84 headends, 22 (26.2%) have news neighborhoods with four news channels, 34 (40.5%) have news neighborhoods with five news channels, 24 (28.6%) have news neighborhoods with six news channels, and the balance (4) have news neighborhoods with seven or more news channels.

44. As requested by counsel for Bloomberg, I calculated the probability that a 4-in-5 news neighborhood would be located on a headend for Cox, Charter, and Cablevision if channel lineups were determined randomly.

45. The steps I took for calculating this probability for each operator followed closely those that I took in calculating the same probability for Comcast as described in detail in paragraphs 50-53 in my previous declaration. In what follows, I only briefly cover steps that were identical to those used in the Comcast analysis and focus my description on those few cases where the steps were different.

46. The key inputs for the calculation of the probability a news neighborhood would be located randomly on a headend for each operator are, for each of their headends, M_h, the number of news channels carried on that headend, and N_h, the total number of channels on that headend that were not broadcast, HD, On Demand, or Public, Educational, or Government ("PEG") channels. For news channels, I count all the starred channel groups in Appendix B of my previous declaration. For convenience, in the paragraphs that immediately follow, I will call a headend's total channels less broadcast, HD, On Demand, or PEG channels simply "total channels."

47. For Cox, 72 of its total headends carry BTV. The average number of news channels on these headends is 11.21, and the average number of total channels is 151.03. For Charter, 228 of its headends in top-35 DMAs carry BTV. The average number of news channels on these headends is 10.05, and the average number of total channels is 129.94. For Cablevision, 44 of its headends in top-35 DMAs carry BTV. The average number of news channels on these headends is 10.07, and the average number of total channels is 215.89.

48. For each operator, I estimate the probability there would be a news neighborhood of 4-in-5 if the M_h channels were randomly distributed among the N_h channels using a numerical simulation with 10,000 draws per headend. For Cox, I found the average probability a news neighborhood would occur at random across its headends, as described above, to be 1.0%. For Charter, I found the average probability a news neighborhood would occur at random across its

headends to be 0.9%. For Cablevision, I found the average probability a news neighborhood would occur at random across its headends to be 0.2%.

49. Based on these average probabilities, I also calculated the probability that news neighborhoods would occur by chance on at least as many headends that carry BTV in the top-35 DMAs for each operator (all DMAs for Cox). For example, based on the average probability of 1.0% that a single Cox headend would have a news neighborhood, the probability that at least 36 of Cox's 72 headends that carry BTV would have a news neighborhood (as is the case in the data) is on the order of 10 to the negative 57th power (i.e. a decimal point followed by 56 zeros and then a "1"). Similarly, based on the average probability of 0.9% that a single Charter headend would have a news neighborhood, the probability that at least 93 of the 146 headends that carry BTV in top-35 DMAs would have a news neighborhood is on the order of 10 to the negative 173rd power. Finally, based on the average probability of 0.2% that a single Cablevision headend would have a news neighborhood, the probability that at least 43 of 44 headends would have a news neighborhood is on the order of 10 to the negative 114th power. All these probabilities are far too low to be considered a product of chance.

50. As requested by counsel for Bloomberg, I also analyzed the carriage of sports channels by Comcast and other major cable operators. In particular, I explored the incidence and size of 4-in-5 sports neighborhoods below channel 100 on their channel lineups following the same procedures already described for news channels.

51. The structure of this analysis followed closely the structure of my analysis for news channels. I began with the same merged TMS channel lineup data from May 4, 2011 that I used in my analysis of news channels. I then defined the set of sports channels that were to be the focus of

my analysis based on their TMS channel name, patterns of industry categorization (e.g. DirecTV's list of sports channels), and my previous research experience.

52. I identified 136 sports channels belonging to one of four broad categories: (1) ESPN family channels (of which there were 5); (2) sports conference and/or league channels (of which there were 18); (3) regional sports networks (RSNs) (of which there were 90); (4) and other sports networks (of which there were 23). This list is included below as Attachment C to this declaration.

53. I also identified High-Definition (HD) feeds of these same channels (of which there were many), Spanish-language sports networks (e.g., ESPN Deportes, Fox Deportes), and general-interest networks that have some sports content (e.g., TBS, TNT, USA). I chose not to include the first two groups for the same reasons I did not include similar types of networks in my analysis of news channels. HD channels largely replicate the content of standard-definition feeds, and Spanish-language channels are typically considered to be "multicultural" channels, regardless of their specific video content. I chose not to include general-interest networks that have some sports content as I concluded that, because the majority of their programming does not consist of sports, these networks would more likely be perceived by consumers as the former "type" of network than the latter.

54. I again resolved to keep a single channel lineup per headend (as described in paragraphs 17-20 of my previous declaration) and eliminated any remaining instances of multiple channels being offered in the same channel position (as described in paragraphs 21-25 of my previous declaration).

55. In resolving issues of multiple channels in a single channel position, I used an automated decision rule similar to that described above for news channels carried by non-Comcast

cable operators, albeit here I used it for all cable operators, including Comcast. If there was only one sports channel among any duplicated channels, I kept it. If there were 2 or more sports channels among the duplicates, I kept the sports channel whose name came first in alphabetical order. This procedure resolved all the duplicates for each of the cable operators.

56. I then defined sports neighborhoods in exactly the same manner as news neighborhoods in my previous declaration, paragraphs 26-39. In essence, I defined a sports neighborhood to be all groups of channels that, based on their relative channel position in a Comcast headend's channel lineup, included (1) at least four contiguous sports channels or (2) at least four sports channels in a group of five channel positions.

57. Focusing on headends in the top 35 DMAs that carry BTV, the results show similar patterns for sports neighborhoods as for news neighborhoods. 367 of Comcast's 485 headends (75.7%) that are in a top-35 DMA and carry BTV offer a sports neighborhood below channel 100. The average number of sports channels in these neighborhoods on these 367 headends is 5.06, with 153 (41.7%) of these sports neighborhoods offering 4 sports channels, 102 (27.8%) offering five, and the balance (112) offering six or more.

58. 32 of Cablevision's 44 headends (72.7%) that are in a top-35 DMA and carry BTV offer a sports neighborhood below channel 100. The average number of sports channels in these neighborhoods on these headends is exactly 4.00 (as all such neighborhoods contain exactly four sports channels).

59. 118 of Time Warner's 226 headends (52.2%) that are in a top-35 DMA and carry BTV offer a sports neighborhood below channel 100.[8] The average number of sports channels in these neighborhoods on these headends is 4.48, with 77 (65.3%) of the neighborhoods offering 4 sports channels, 25 (21.2%) offering five, and the balance (16) offering exactly six.

60. 88 of Charter's 146 headends (60.3%) that are in a top-35 DMA and carry BTV offer a sports neighborhood below channel 100. The average number of sports channels in these neighborhoods on these headends is 6.16, with 45 (51.1%) of the neighborhoods offering between four and six sports channels, 37 (42.1%) offering seven, and the balance (6) offering eight or more.

61. Counsel for Bloomberg also asked me to analyze the extent to which channels carried on Comcast headends are carried in multiple channel positions and, if so, whether they are carried above channel position 100, below channel position 100, or both.

62. To do so, I began with the final dataset that I used to analyze the incidence of news neighborhoods on Comcast's channel lineups. As described in my previous declaration at paragraph 25, this consisted of 346,740 channel positions across 1,014 Comcast headends.

63. I then counted the number of unique networks carried on those headends and divided them into (1) those that are only carried once (which I call "singleton" networks) and (2)

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[8] The number of headends that are in a top-35 DMA and carry BTV differs slightly for Time Warner in this analysis of sports neighborhoods (there are 226) compared to the analysis of news neighborhoods described in paragraph 43 (where there are 228). This discrepancy is due to the process by which I ensured a single channel per channel position in each analysis. In the analysis of news neighborhoods, this process ensured no loss of news channels across channel positions. In the analysis of sports neighborhoods, this process ensured no loss of sports channels across channel positions, but made no guarantees regarding news channels. As a consequence, in the analysis of sports neighborhoods, several instances of BTV were dropped where they were carried on the same channel position with another channel. This resulted in the reduced number of headends that are in top-35 DMAs and carry BTV. No such issue arose with the other cable operators.

those that are carried in multiple channel positions (which I call "multiple" networks).[9] Across the 1,014 Comcast headends, the average number of unique networks carried was 322.9, of which 305.4 (or 94.6%) were singleton networks and 17.5 were multiple networks. These averages correspond to 327,454 total networks, 309,696 singleton networks, and 17,758 multiple networks, respectively, across the 1,014 Comcast headends.

64. Among multiple networks (*i.e.*, those networks that were carried more than once on a given headend), the average network was carried 2.09 times per headend, with 90.4% of the cases being that a network was carried exactly twice per headend.

65. Multiple networks occupied 37,044 channel positions in the 2011 data. Of these, 5,718 (or 15.4%) were below channel position 100, and the balance were at or above channel position 100.

66. Of the 17,758 networks that were offered in multiple channel positions across all Comcast's headends, 4,783 (26.9% of this subsample or 1.5% of the total networks across all headends) had at least one channel position below channel 100 and at least one channel position at or above channel 100.

67. Across all networks, the two networks which most commonly occupied multiple channel positions, at least one of which was above and at least one of which was below channel position 100, are both affiliated with Comcast: ShopNBC (with 203 instances across the 1,014 headends) and Style (with 161 instances).

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[9] Note that a "network" distinguishes between a channel's standard-definition and high-definition feeds. So if a headend carries both CNN and CNN HD, each in a single channel position, then that would count as two singleton networks for the purpose of the analysis to follow.

68. Counsel for Bloomberg also asked me to analyze how often Comcast excludes the C-SPAN family of channels in news neighborhoods that also exclude BTV on headends in top 35 DMAs that carry BTV.

69. In my previous declaration, I found that, of the 369 headends in top-35 DMAs that carry BTV and that have a news neighborhood below channel 100 that does not include BTV, 99.7% (368) include HLN in a news neighborhood that excludes BTV, 98.9% (365) include CNBC, 97.3% (359) include CNN, 93.5% (345) include Fox News, and 61.8% (228) include MSNBC.[10]

70. Extending this line of analysis to the C-SPAN family of channels shows that, of these same news neighborhoods, 28.2% (104) include C-SPAN, 10.6% (39) include C-SPAN2, and 0.3% (1) includes C-SPAN3. Indeed, channels in the C-SPAN family are much more likely to be carried outside these news neighborhoods: this is true for 262 of the 366 headends (71.6%) that carry C-SPAN, for 324 of the 363 headends (89.3%) that carry C-SPAN-2, and for 337 of the 338 headends (99.7%) that carry C-SPAN3.

71. Counsel for Bloomberg also asked me to analyze the extent to which Comcast has changed their channel lineups over time. In particular, I compared Comcast's channel lineups as of June 16, 2010 with its channel lineups as of May 4, 2011 and evaluated the extent to which each of the networks carried on Comcast changed channel positions in this period.

72. This analysis was conducted in three steps. First, I determined Comcast's channel lineups as of May 4, 2011. Second, I determined Comcast's channel lineups as of June 16, 2010.

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[10] Note that these results include the 1 additional headend which should have been included in the analysis in my previous declaration but was not due to a coding error. As such, the results reported here as representing the conclusions from my previous analysis differ slightly from the numbers actually presented in that declaration. See footnote 3 for more details.

Third, I merged these two datasets together and compared the lineups over time. I described the specific steps I took to determine Comcast's channel lineups as of the May 4, 2011 data in my previous declaration in paragraphs 10-49. I describe the other two steps below.

73. To determine Comcast's channel lineups as of June 16, 2010, Bloomberg again licensed channel lineup data from TMS. TMS does not keep historical channel lineup data, but Bloomberg had previously licensed the June 16, 2010 data for use in its comments opposing the Comcast-NBC Universal merger. Bloomberg again licensed it for use in the current proceeding and provided me with access to it so that I could conduct my analysis.

74. The steps required to construct Comcast's 2010 channel lineups were similar to those required to construct its 2011 channel lineups. The data provided by TMS came in the form of two relational databases. The first ("lineups") database reported information at the level of the headend id-device-channel position.[11] A headend is a facility operated by a cable system that, among other things, receives television programming (usually by satellite), organizes that programming into channel lineups, and distributes those lineups to devices (usually) attached to customers' televisions according to the type of service they have purchased from the system. As in my previous declaration, I will refer to a headend id as a headend in the balance of this declaration.

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[11] This database was called [redacted]

75. The 2010 "lineup" database also reported information about the zip codes served by each headend, the [redacted] for the DMA encompassing those zip codes, and the MSOthat owned the headend.[12]

76. The 2010 "lineup" database was only available in an XML format that was incompatible with Stata's "xmluse" command. In order to compare it with the 2011 data, I had it converted into 14 smaller comma-delimited data files and read these into Stata.

77. There were a number of differences between the 2010 and 2011 TMS "lineup" datasets in both the fields included in the data and the names used to identify those fields. Anticipating the desire to later link them together, I resolved to reconcile these differences when reading in the raw 2010 data.

78. The difference in field names across years was usually easy to reconcile by simple inspection. [redacted] In case of doubt, more substantial differences could usually be reconciled by examining a subset of headends that were present in both years and inspecting the names of the fields in each year that presented the identical information. [redacted]

79. Missing fields were more challenging to recover. The only meaningful data missing from the 2010 data that was present in the 2011 data were the name and rank (within the 210 DMAs in the United States) of each headend's DMA. [redacted]

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[12] [redacted]

[redacted] As such, I determined the DMA name and rank for each headend in the 2010 data by attributing to it the DMA name and rank for the 2011 [redacted] that matched that 2010 headend's [redacted]. When I later merged the 2010 and 2011 data, I confirmed that the DMA rank associated with each headend that was present in both years was the same.

80. The second relational database ("stations") reported information at the level of each television station offered on any headend in the TMS data.[13] It reported, among other things, the channel name for that station.

81. I merged these two databases by their common field [redacted]. The result was 394,778 headend-device-channel positions across 1,059 Comcast headends.

82. After reconciling the aforementioned differences in reading in the raw 2010 data, the subsequent steps followed closely those that I took in obtaining channel lineups for the 2011 data, which were described in detail in paragraphs 10-49 in my previous declaration. In what follows, I only briefly cover the steps where they are identical to those followed in the 2011 data and focus my description on those few cases where the steps are different.

83. I next defined the set of possible news, business news, and public affairs channels that were to be the focus of my analysis. This followed the steps described in my previous declaration in paragraphs 14-16.

84. As in the 2011 data, there were again many instances of multiple channels being offered on a single channel position due to headends providing different channel lineups according

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[13] This database was called [redacted]

to the device households were using to receive the programming. Indeed, there were 2,006 lineups being distributed over the 1,059 headends in the 2010 data.

85. As for the 2011 data, for simplicity I decided to keep one channel lineup per headend. I followed the same rule as there: I kept the Digital (non-rebuild) lineup if one was offered and the Analog lineup if one was not. The result was 887 Digital (non-rebuild) lineups and 172 Analog lineups.

86. As for the 2011 data, this procedure resolved many but not all of the instances of multiple channels being offered on a single channel position; there remained 2,354 (of 331,612, or 0.7%) channel positions in which there were more than one listed channel within the same lineup.

87. As for the 2011 data, I resolved these first by dropping duplicate channels if they shared the same channel name (resolving 228 of the 2,354 duplicate channel positions) and ignoring differences in names if none of the affected channels were a news channel (resolving 1,985 of the duplicate channel positions). After these steps, only 141 (of 331,612, or 0.04%) channel positions continued to have multiple different channels where at least one of which was a news channel.

88. Unlike for the 2011 data, I did not resolve these by hand. Instead, I constructed an automated system to determine which channel to keep. If there was only one news channel among the duplicated channels, I kept it. This resolved 132 of the 141 cases. If there were 2 or more news channels among the duplicates, I investigated the type of news channel it was. If only one was a news channel among the 5 most widely distributed news channels (CNBC, CNN, Fox News, HLN, or MSNBC), I kept it. If there were either none or two or more such channels, I kept the news channel whose name comes first in alphabetical order. This resolved the final 9 cases.

89. I next defined news neighborhoods following the steps described in paragraphs 26-39 of my previous declaration and calculated all of the same objects that were the subject of my analysis of the 2011 data (*e.g.*, the incidence of news neighborhoods, whether they carried BTV, whether they carried other news channels, etc.) as described in paragraphs 40-49 of my previous declaration. All of these steps resulted in the final 2010 Comcast lineup dataset to which I compared the 2011 Comcast lineups. I describe how I merged these two datasets in what follows.

90. I began by loading each of the 2010 and 2011 lineup datasets and keeping the variables most relevant to my subsequent analysis, notably information about each headend (first community and zip code served, DMA name and rank, whether it had a news neighborhood anywhere in the lineup and whether it had one below channel 100) and that headend's lineup (each channel name and position, both absolute and relative, whether it was a news channel, and whether it was in a news neighborhood).

91. I then used the Stata "join" command to merge these datasets by their headend and station number. That is to say, each incidence of a station number within each headend in 2010 was matched to the same station number and headend in 2011. If a station was never repeated on a headend, this would be the same thing as merging each of the two datasets. "Joining" them instead forms all pairwise combinations of station numbers within a headend across years. For example, the Comcast headend in [redacted] carried [redacted] on channel [redacted] in 2010 and carried it on both channel [redacted] and channel [redacted] in 2011. In the "joined" data, there were two observations: the single observation in 2010 merged with *each* of the observations in 2011. In my analysis below, I will focus on the first instance of each channel carried by Comcast in each of its lineups.

92. As described above, there are 331,612 channel positions across 1,059 headends in the 2010 data. As described in paragraph 25 of my previous declaration, there were 346,740 channel positions across 1,014 headends in the 2011 data.

93. There were 404,419 headend-channels in the joined 2010-2011 data, of which 23,478 were present only in the 2010 data, 37,366 were only present in the 2011 data, and 343,575 were present in both years of data.

94. The presence of data in one but not both years arose due to headends being present in one year but not the other, as well as headends being present in both years that contained station numbers that were present in one year but not the other. I discuss each in turn.

95. There were 1,001 Comcast headends that were present in both years. This means that 58 of the 1,059 2010 headends were not present in the 2011 data and 13 of the 1,014 2011 headends were not present in the 2010 data. These are likely due to ongoing processes within Comcast to retire older headends and introduce new ones.

96. I focus the balance of my analysis on the 1,001 Comcast headends that were present in both years. I do this largely for computational reasons. Because the headend identifiers for these headends match between the TMS data in 2010 and 2011, I have great confidence that my analysis is correctly measuring the changes in channel lineups facing the households served by these headends.

97. Unfortunately, this also means that my analysis is capturing an incomplete picture of the full extent of channel changes facing Comcast subscribers. Comcast subscribers being served in 2010 by a headend that was subsequently retired are no doubt being served by another Comcast headend in 2011. Unless the channel lineups on the retired and replacement headend were identical, such subscribers necessarily faced some channel lineup changes. Similarly, Comcast subscribers

being served in 2011 by a new headend were no doubt previously being served by another Comcast headend in 2010. They, too, were likely to have experienced lineup changes.

98. I would prefer to include channel changes due to the retirement of old and the introduction of new headends in my analysis. Unfortunately, it is difficult to track down these changes. Without proprietary subscriber information, I could only do it by linking the zip codes served by old/new headends to the zip codes served by existing headends. Even then, there is the potential for overlap of zip codes.

99. I therefore focus my analysis only on those Comcast headends that are present in both years of the data. I reiterate, however, that this is likely to underestimate the extent of channel changes experienced by Comcast subscribers between 2010 and 2011.

100. In conducting my analysis of channel changes on Comcast systems between 2010 and 2011, I decided to focus only on the first instance of the network in each channel lineup. I did this largely because the networks that were carried in multiple channel positions often (1) were multiplexed versions of high-definition movie channels (e.g. HBO HD, Showtime HD, Cinemax HD), (2) provided multiplexed or overflow content for sports networks (e.g. Big Ten Network Overflow, NFL Network, NBA TV), or (3) provided on-demand content (e.g. Searchlight On Demand, Movies on Demand, HD on Demand). As households are likely to be less sensitive to changes in channel positions for these kinds of networks (or the second instance of any network) than for the first instance of a network, I chose to focus on the latter.[14]

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[14] The first instance of each of the multiplexed/overflow/on demand networks will of course remain as part of the analysis along with the first instance of all other networks. It is just the duplicate networks in higher channel positions that will not count.

101. As a result of this decision, a network's channel position in my analysis corresponds to the channel position of its first instance in a channel lineup, counting from below. Thus for the earlier example of [redacted] in [redacted], I consider its (first) channel position to be [redacted] in 2010 (as that is its first and only channel position in that year) and [redacted] in 2011 (as that is its first channel position in that year). In what follows, I will usually refer only to a network's channel position – that should be understood to be the network's "first" such channel position.

102. For the 1,001 Comcast headends present in both years of the data, an average of 329.2 channels are carried in a Comcast channel lineup. Of these, 290.8 (or 88.3%) are present in both years, 5.8 (or 1.8%) are present in 2010 only, and 32.6 (or 9.9%) are present in 2011 only.[15] Across all 1,001 headends, this represents 291,089 headend-channels present in both years, 5,850 headend-channels present in 2010 only, and 32,599 headend-channels present in 2011 only. As was the case for headends, it is not surprising that Comcast has dropped some channels from the average headend between 2010 and 2011 and added even more.

103. For the 594 headends present in both years of the data in the top 35 DMAs, an average of 356.0 channels are carried in a Comcast channel lineup. Of these channels, 314.6 (or 88.4%) are present in both years, 6.3 (or 1.8%) are present in 2010 only, and 35.2 (or 9.9%) are present in 2011 only.[16]

104. I next evaluated whether a channel present in 2010 had changed positions. I decided one had done so if three conditions held: (1) the station was carried on the headend in both years

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[15] Of the channels present in both years, an average of 270.6 of the 290.8 (93.1%) appear only once on a channel lineup.

[16] Of the channels present in both years in top-35 DMAs, an average of 292.4 of the 314.7 (92.9%) appear only once on a channel lineup.

of the data; (2) it was the first instance of that channel in the 2010 channel lineup; and (3) the channel number in 2010 did not match the channel number in 2011.

105. The first condition prevented counting channels that disappeared between 2010 and 2011 as changes in that channel's channel position. The second was discussed earlier; see paragraphs 100 and 101 above. The third captured the essence of a channel changing position.

106. Comcast has argued that it is burdensome for the company and its customers to change a network's channel position. Despite this, 10,625 channels changed their (first) channel position between June 2010 and May 2011, an average of 10.6 channels per headend. This was 3.7% of the 291,089 first channel positions across these headends. In the top 35 DMAs, 6,806 channels (of 186,876 channel positions, or 3.6%) changed position, an average of 11.5 channels per headend.

107. Comcast has argued that it is particularly burdensome to change channels for networks in relatively low channel positions (between channel 1 and 99).[17] Despite this, channels that were below 100 in 2010 have moved at only a slightly lower rate than that observed for all channels.

108. Among all 1,001 Comcast headends present in both years of the data, an average of 65.2 channels were carried below channel position 100. Of these, 62.6 (or 96.0%) were present in both years of the data. Across these headends, 1,752 channels changed position between June 2010 and May 2011, an average of 1.8 channels per headend. This was 2.8% of the 62,276 first channel positions across these headends.

109. Similar patterns emerge among headends in the top 35 DMAs. There were an average of 67.7 channels carried below channel position 100 in top 35 DMAs, of which 64.9 (or

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[17] *See, e.g.*, Comcast Answer at ¶ 82.

95.9%) are present in both years of the data. Within these DMAs, 930 channels (of 38,349, or 2.4%) changed positions, an average of 1.6 channels per headend.

110. The identities of the networks that changed first channel position between 2010 and 2011 covered the spectrum of channels offered by Comcast. The network that most frequently changed first channel position was C-SPAN2, which did so on 138 of 1,001 headends. C-SPAN2 was also the leader in changes among channels who were below position 100 in 2010, with 130 changes of their first channel position, followed by QVC (113 changes), History (91), C-SPAN (58), Home Shopping Network (57), and Country Music Television (38). Sometimes Comcast changed the first channel position of very popular networks (among those below 100 in 2010), including TBS (27), Cartoon Network (26), USA (23), Comedy Central (20), AMC (19), Bravo (19), FX (16), Discovery (11), and even ESPN (10). Additionally, there were many instances where Comcast either moved its affiliated channels from channel positions above 100 to channel positions below 100 or added a feed for such channels below channel position 100. For example, this occurred 77 times with respect to ShopNBC and 10 times with respect to G4.

111. All the results above document the frequency and magnitude of changes in the *first* channel position a channel holds on a channel lineup. In particular, if Comcast decided to carry a second feed of a given channel between 2010 and 2011 and this second feed is on a lower channel position than the original, this gets counted in the results above as a (first) channel position change.

112. I also explored the frequency and magnitude of "pure channel moves". By a pure channel move (or pure move), I mean that subset of channel changes for which the channels are only carried on the lineup in one channel position in each year. For convenience, I call these channels singleton channels.

113. Two examples from the [redacted] headend introduced above clarify the difference between a channel that changes its first position and one that "purely moves". The case of [redacted] introduced above is an example of a channel that changed its first position; in 2010 its first (and only) channel position was [redacted] and in 2011 its first (of two) channel positions was [redacted].[18] [redacted], on the other hand, is an example of a pure move; in 2010 its first (and only) channel position was [redacted] and in 2011 its first (and only) channel position was [redacted].

114. Of the 10,625 channels that changed their first channel position across all 1,001 Comcast headends present in both years of the data, 6,909 were pure moves. As a channel can only be carried on a headend in one channel position in each year in order to qualify as a pure move, there are fewer channel positions in the merged data that are candidates. Indeed, there are 270,917 first channel positions among channels that are only carried once per headend in both years (compared with 291,089 first channel positions among all channels present in both years). Thus 2.6% of Comcast's singleton channels moved between 2010 and 2011, with an average of 6.9 channels per headend.

115. Similar patterns arise for headends in Top 35 DMAs and for channels carried below channel 100 in 2010. Among all channels in top 35 DMAs, 4,422 of 173,699 possible singleton channels (2.5%) moved between 2010 and 2011, with an average of 7.4 singleton channels moving per headend. Among channels that were below channel position 100 on Comcast's lineups in 2010, 1,098 of 56,827 (1.9%) singleton channels moved between 2010 and 2011, with an average of 1.1 singleton channels moving per headend. Among singleton channels below 100 in 2010 on

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[18] Similarly, on the [redacted] headend in the [redacted], MSNBC's first (and only) channel position in 2010 was [redacted] and in 2011 its first (of two) channel positions was [redacted].

Comcast's headends in top 35 DMAs, 515 of 35,290 (1.5%) moved, with an average of 0.9 moving per headend.

FOR PUBLIC INSPECTION

Dated: August 30, 2011

Gregory S. Crawford

Attachment A

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Education

Ph.D. in Economics, Stanford University, Stanford, CA, 1998
B.A., Economics (with Honors), University of Pennsylvania, Philadelphia, PA, 1991

Professional Experience

University of Warwick, Department of Economics

Professor of Economics, September 2008-present

Director of Research, September 2009-present
Courses taught: *Graduate:* Empirical Industrial Organization (MSc/PhD), Empirical Methods. *Undergraduate:* Introductory Econometrics (time series, limited dependent variables, panel data), Undergraduate Business Strategy.

Centre for Economic Policy Research (CEPR)

Research Fellow, Industrial Organization Programme, February 2011-present

Federal Communications Commission (FCC)

Chief Economist, September 2007 - August 2008

Reported to the then-FCC Chairman, Kevin Martin. Primary responsibilities were to advise the Chairman and his staff regarding the economic issues facing the Commission, to formulate and implement desired policies, to communicate and discuss these policies with senior Commission staff, and to assist as needed the 40+ staff economists. Main workstreams focused on the cable and satellite industries, including bundling and tying in wholesale and retail cable and satellite television markets and the economic analysis of XM/Sirius satellite radio merger. Also consulted on spectrum auction design, net neutrality, access pricing, ownership rules, and various international policy issues. Previous to joining the Commission, wrote a sponsored study analyzing media ownership and its impact in television markets.

University of Arizona, Department of Economics

Associate Professor of Economics, September 2008-August 2009 (on leave)

Assistant Professor of Economics, September 2002-August 2008 (on leave, 2007-08)

Courses taught: *Graduate:* Empirical Industrial Organization (2nd-year PhD), Business Strategy (MBA) *Undergraduate:* Introductory Econometrics (cross-section).

Duke University, Department of Economics

Assistant Professor of Economics, September 1997-August 2002

Courses taught: *Graduate:* Empirical Industrial Organization (2nd-year PhD), Graduate Econometrics (1st-year PhD), *Undergraduate:* Introductory Econometrics (cross-section), Introductory Microeconomics, The Economics and Statistics of Sports.

Other Academic Appointments

Visiting Professor, European School of Management and Technology, Berlin, Summer 2007.

Visiting Professor, Fuqua School of Business, Duke University, 2000-2001

Consulting Experience (Country)

Evaluating switching costs in fixed voice telephony markets (UK), 2010-11 – Designed and executed reports for Office of Communication (Ofcom) evaluating the impact of automatically renewable contracts (ARCs) introduced by British Telecommunications (BT) in the UK fixed voice telephony market. Ofcom subsequently challenged the practice (March, 2011).

Evaluating competitive harms, Comcast-NBCU (US), 2010, consulting expert – Worked closely with lead expert to design and execute economic and econometric analyses in support of Bloomberg (Television) L.P.s opposition to Comcast-NBCU merger. Analysis included business news market definition and quantifying the potential harms of the merger, including those related to "neighborhooding" of television channels and refusal to carry (foreclosure). Report submitted to media regulator (FCC). FCC conditions required merged firm not to favor their content in general, with specific provisions for the neighborhooding of news (including business news) channels.

Analysis of advertising market regulations (UK), 2009-10, consulting expert – Advised project team on analysis of demand for advertising for the purpose of evaluating changes in regulation of advertising minutes on public-service broadcasters in the United Kingdom. Designed econometric model and supervised implementation and description of results. Report submitted to media regulator (Ofcom).

Distribution of cable copyright royalties (US), 2009-10, testifying expert – Submitted rebuttal testimony to copyright royalty judges regarding relative market value of programming provided on the distant broadcast signals carried by U.S. cable systems. Testified before judge panel.

Blockbuster/Hollywood Video (US), 2005, consulting expert – Supported BatesWhite team to establish liability for FTC challenge of proposed merger.

Echostar/DirecTV (US), 2002-03, consulting expert – Supported analysis by AES Consulting (now Compass) of liability for proposed merger. Helped design econometric model of pay-television

demand and participated in conference calls with opposing lawyers and experts.

Advisory roles (US):
AMD/Intel, 2009; DRAM Litigation, 2009; German media market, 2007; AT&T/BellSouth, 2006; Auto-finance merger, 2005; Death-care industry merger, 2005; Vitamins price-fixing litigation, 1999-2001

Bates White LLC, Academic Affiliate, 2005-present

Publications

"The Welfare Effects of Bundling in Multi-channel Television Markets," (with Ali Yurukoglu), University of Warwick, April 2011, forthcoming, *American Economic Review.*

"Cable Regulation in the Satellite Era," Chapter 5 in Rose, N., ed, "Economic Regulation and Its Reform: What Have We Learned?", forthcoming, University of Chicago Press.

"Economics at the FCC: 2007-2008," (with Evan Kwerel and Jonathan Levy), *Review of Industrial Organization*, v33n3 (November 2008), 187-210.

"The Discriminatory Incentives to Bundle: The Case of Cable Television," *Quantitative Marketing and Economics*, v6n1 (March 2008), 41-78.
- Winner, 2009 Dick Wittink Prize for the best paper published in the *QME*

"Bidding Asymmetries in Multi-Unit Auctions: Implications of Bid Function Equilibria in the British Spot Market for Electricity, (with Joseph Crespo and Helen Tauchen), *International Journal of Industrial Organization*, v25n6 (December 2007), 1233-1268.

"Bundling, Product Choice, and Efficiency: Should Cable Television Networks Be Offered A La Carte?," (with Joseph Cullen), *Information Economics and Policy*, v19n3-4 (October 2007), 379-404.

"Monopoly Quality Degradation and Regulation in Cable Television," (with Matthew Shum), *Journal of Law and Economics*, v50n1 (February 2007), 181-209.

"Uncertainty and Learning in Pharmaceutical Demand," (with Matthew Shum), *Econometrica*, v73n4 (July 2005), 1137-1174.

"Recent Advances in Structural Econometric Modeling: Dynamics, Product Positioning, and Entry," (with J.-P. Dube, K. Sudhir, A. Ching, M. Draganska, J. Fox, W. Hartmann, G. Hitsch, B. Viard, M. Villas-Boas, and N. Vilcassim), *Marketing Letters*, v16n2 (July 2005).

"The Impact of the 1992 Cable Act on Household Demand and Welfare," *RAND Journal of Economics*, v31n3 (Autumn 2000), 422-449.

Reports

"Empirical analysis of BT's automatically renewable contracts," (with ESMT Competition Analysis, Commissioned Research Study for the Office of Communications), August 2010. Also Supplementary Report, February 2011.

"Television Station Ownership Structure and the Quantity and Quality of TV Programming," (Commissioned Research Study for the Federal Communications Commission), July 2007.

Work in Progress

Working Papers

"The Empirical Consequences of Advertising Content in the Hungarian Mobile Phone Market," (with Jozsef Molnar), University of Arizona, March, 2008.

"Estimating Price Elasticities in Differentiated Product Demand Models with Endogenous Characteristics," (with Dan Ackerberg), mimeo, University of Arizona, March 2007.

"The Welfare Effects of Endogenous Quality Choice: The Case of Cable Television," (with Matthew Shum), mimeo, University of Arizona, March, 2006

"A Virtual Stakes Approach to Measuring Competition in Product Markets," (with R. Michael Black, Shihua Lu, and Hal White), mimeo, University of Arizona, May 2004.

Work In Progress

"Robust Instrumental Variables," (with Dan Ackerberg), mimeo, UCLA, March 2007.

"An Empirical Analysis of Manufacturer-Retailer Interaction: What Determines Wholesale Prices?" (with Zsolt Macskasi), May 2006.

"Storability, Competition, and Sales: Do Firms Cut Prices to Steal Demand from Rivals or Themselves?," (with James J. Anton), April 2005.

"A Dynamic Model of Quality Competition in Subscription Television Markets," (with Alex Shcherbakov), March 2007.

"The Impact of Ratings and Word-of-Mouth on DVD Rentals: An Analysis of the Netflix Data," (with Ivan Maryanchyk), February 2007.

Grants

"Endogenous Product Characteristics in Empirical Industrial Organization," Economic and Social Research Council, £140,000 (~$220,000), 2010-2012.

"The Empirical Consequences of Advertising Content" (with Jozsef Molnar), Hungarian

Competition Commission, 10,000,000 Hungarian Forint (~$50,000), 2007-2008

Other Professional Activities

Associate Editor, *International Journal of Industrial Organization*, October 2005 - present.

Editorial Board, *Information Economics and Policy*, December 2007 - present.

Referee for *Econometrica, American Economic Review, Review of Economics Studies, RAND Journal of Economics, Review of Economics and Statistics, Quantitative Marketing and Economics, National Science Foundation, International Journal of Industrial Organization, Journal of Industrial Economics, Journal of Applied Econometrics, Information Economics and Policy, Management Science, Southern Economic Journal*

2010 Presentations: LBS (1/10), UCL (4/10), Oxford (5/10), Invitational Choice Conference (5/10), Manchester University (9/10), EIEF (Rome, 10/10), University of Venice (10/10), University College Dublin (11/10).

2009 Presentations: ESMT, Berlin (5/09), CEPR IO, Mannheim (5/09), University of Leuven (9/09), University of Toulouse (Econometrics Workshop and Competition Policy Workshop), (11/09)

2008 Presentations: UK Competition Commission (1/08), Oxford University (1/08), University of Warwick (1/08), University of Virginia (3/08), Industrial Organization Society (5/08), NBER Summer Institute, IO Group (6/08), 6th Workshop in Media Economics, Zurich (10/08), Network of Industrial Economics, London (12/08)

2007 Presentations: University of Pennsylvania (Wharton, 3/07), ESMT (Berlin, 4/07), Northwestern University (5/07), Bates White Antitrust/Merger Conference (6/07), University of Wisconsin, Madison (10/07), Duke University (Fuqua, 11/07)

2006 Presentations: AEA Meetings, Boston (1/06), Columbia (3/06), University of Chicago Marketing (3/06), Bates White Antitrust/Merger Conference (6/06), EARIE Amsterdam (8/06)

2005 Presentations: NBER Conferences on Regulation (2/05, 6/05), Econometric Society World Congress, London (8/05)

2004 Presentations: Stanford University (3/04), CEPR "The Role of Competition in the New Economy", Greece (5/04), Invitational Choice Conference (6/04), FCC Symposium on 'A La Carte" MVPD Pricing (7/04)

Conference Organization: Triangle Applied Micro Conference, April 2000, Triangle Applied Micro Conference, May 1999 (co-organizer)

Attachment B

List of (28) Broadcast Multicast Television Networks Included in Supplementary Analysis

(TMS Channel Call Signs)

KGWDT2
KHOUDT2
KSTPDT2
WDSCDT2
WNYEDT2
WPBTDT2
WPMTDT3
WRTVDT2
WTVFDT2
WUFTDT2
WVITDT2
KBDIDT3
KBTCDT2
KUENDT2
WDSCDT3
WHTJDT3
WNEODT3
WNVC
WNVCDT
WNVCDT2
WNVCDT4
WNVCDT5
WNVTDT
WNVTDT2
WNVTDT4
WNVTDT5
WNVTDT6
WNVTDT7

Attachment C
List of (136) Television Networks Included as Sports Networks
(TMS Channel Names)

1. ESPN Family Networks (5)

ESPN
ESPN2
ESPNEWS
ESPN Classic
ESPNU

2. Sports Conference or League Networks (18)

Big Ten Network
Big Ten Network (Indiana)
Big Ten Network (Illinois)
Big Ten Network (Pennsylvania)
Big Ten Network (Minnesota)
Big Ten Network (Michigan)
Big Ten Network (Ohio)
Big Ten Network (Wisconsin)
Big Ten Network (Kentucky)
Big Ten Network Overflow
MLB Network
NBA TV
NBA On Demand[19]
NFL NETWORK
NFL RedZone
NFL SUNDAY TICKET RED ZONE
NFL On Demand
NHL Network

3. Regional Sports Networks (RSNs) (90)

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[19] I chose not to include channels NBA League Pass 1 – NBA League Pass 10 as I felt that would skew upward the number of offered sports networks in a way that would not match consumer perceptions. NBA League Pass is, in my opinion, more accurately perceived as a single additional sports network, not 10.

Altitude Sports and Entertainment Networ
Comcast Houston CSS
Comcast Network (Mid-Atlantic)
Comcast Sports Southeast
Comcast Sports Southeast 2
Comcast SportsNet Bay Area
Comcast SportsNet Bay Area Plus 2
Comcast SportsNet Mid-Atlantic
Comcast SportsNet Mid-Atlantic (Washingt
Comcast SportsNet Mid-Atlantic Plus
Comcast SportsNet Northwest
Comcast SportsNet Philadelphia
Comcast SportsNet Plus 2
Comcast Sportsnet California
Comcast Sportsnet California No Kings 24
Comcast Sportsnet California No Kings Al
Comcast Sportsnet Chicago
Comcast Sportsnet Chicago Plus
Comcast Sportsnet New England
Comcast Sportsnet New England - Zone 1
Comcast Sportsnet New England Overflow
Comcast Sportsnet Plus
Cox Sports Television
Fox Sports Arizona (New Mexico North)
Fox Sports Arizona (New Mexico South)
Fox Sports Arizona - FSAZ
Fox Sports Carolinas-North Carolina West
Fox Sports Detroit - FSD
Fox Sports Detroit Plus
Fox Sports Florida
Fox Sports Florida (No. Florida feed)
Fox Sports Florida (Okeechobee)
Fox Sports Florida (South)
Fox Sports Houston
Fox Sports Indiana
Fox Sports Midwest

Fox Sports Midwest (Kansas City)
Fox Sports Midwest (Kansas/Nebraska)
Fox Sports Net North (Metro)
Fox Sports Net North (Non-Metro & PPV)
Fox Sports Net North - Wisc.
Fox Sports Ohio
Fox Sports Ohio 1 (Cleveland feed)
Fox Sports Ohio 10 (Dayton)
Fox Sports Ohio 2 (Cincinnati feed)
Fox Sports Ohio 6 (Bowling Green, KY/Ind
Fox Sports Ohio 9 (Charleston/Huntington
Fox Sports Plus
Fox Sports Prime Ticket
Fox Sports South - Georgia
Fox Sports South - Kentucky
Fox Sports South - Main Feed
Fox Sports Southwest (Feed 6)
Fox Sports Southwest (Main Feed)
Fox Sports Southwest (No. La. feed)
Fox Sports Southwest (Zone 1)
Fox Sports Southwest (Zone 4)
Fox Sports Spokane
Fox Sports Tennessee
Fox Sports Tennessee Non Memp
Fox Sports Tennessee/Memphis
Fox Sports West
MASN - Mid Atlantic Sports Network
Mid Atlantic Sports Network Alternate
Madison Square Garden Network
MSG (Alt. feed) - MSG2 OVERFLOW
MSG PLUS Zone 2 Overflow
MSG Plus
Mountain West Sports Network
New England Sports Network
New England Sports Network Plus
ROOT Sports Northwest

ROOT Sports Northwest (Alt.) - RTN1
ROOT Sports Northwest (Alt.) - RTN4
ROOT Sports Pittsburgh (Alt. feed)
ROOT Sports Pittsburgh (Main Transponder
ROOT Sports Rocky Mountain
ROOT Sports Rocky Mountain West
RTSU (ROOT Sports Rocky Mtn Utah)
SportSouth
SportSouth for Grizzlies
Sportsnet NY
Sun Sports
Sun Sports (Alt.) - SUN
Sun Sports (North Florida feed)
Sun Sports Marlins Alternate
Sun Sports North Black Out Rays
Sun Sports North Special Edit
Sun Sports South No Rays
Yankees Entertainment & Sports Network

4. Other Sports Networks (23)
BH CUST Indianapolis HomeTown Sports-Ind
CBS Sports Network
Eagles On Demand
Exercise On Demand
Fox College Sports - Atlantic
Fox College Sports - Central
Fox College Sports - Pacific
Fox Soccer Channel
Fox Soccer Plus
Fuel TV
The Golf Channel
GOL TV
GOLTV (English)
HRTV
Neo Cricket
Outdoor Channel

Speed Channel
Tennis Channel
The Sportsman Channel
TV Games Network
VERSUS
World Fishing Network (US)
World Fishing Network (Canada)

EXHIBIT B

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Complaint of	)	
	)	
BLOOMBERG L.P.	)	MB Docket No. 11-104
	)	
v.	)	
	)	
COMCAST CABLE COMMUNICATIONS, LLC	)	
	)	
	)	
	)	

DECLARATION OF JAMES TRAUTMAN

I, James Trautman, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is James Trautman. My business address is 4582 S. Ulster Street Parkway, Suite 1340, Denver, CO 80112.

2. I am Managing Director of Bortz Media & Sports Group, Inc. In this capacity, I have provided business planning, business development, market research, and related analytical services to both cable programming networks and cable system operators. Over a period of 28 years, I have been retained to evaluate and/or assist more than 50 programming networks, and have been retained on multiple occasions by all of the three largest cable operators as well as the leading cable industry associations.

3. I have advised both networks and owners of programming with respect to the negotiation of agreements with distributors, including cable operators, and have been directly

involved in such negotiations. In addition, I have developed business plans for numerous "start-up" networks, as well as those in the early stage of growth, and assisted these networks in business development and implementation. In this capacity, I have specifically advised these networks with regard to the service tiers and programming packages that are realistically accessible to them, and to the benefits and limitations of these tiers/packages. This advice has included discussing the impact and importance of channel placement on cable systems. Finally, I have conducted research on behalf of and advised established programming networks on a wide range of matters including competitive strategy, market perceptions/positioning, and factors contributing to the value that they offer to distributors, including cable operators.

4. Separately, I have conducted research regarding the competitive, programming and packaging strategies of both cable operators and their competitors, in order to advise cable operators on these topics. These assignments have included evaluations of: (1) the programming, pricing, packaging and marketing strategies of competitors for the purposes of recommending corresponding strategies for cable operator clients; (2) the relative value of programming networks carried by the operators; and (3) the pricing and structure of overall program service offerings and tiers.

5. Based on this experience, I have substantial knowledge of the factors that programming networks consider in negotiating distribution agreements with cable operators. Similarly, I am aware of the factors that cable operators consider when choosing which networks to carry, and when designing channel lineups and programming packages. My curriculum vitae is included as Attachment A to this Declaration.

6. I was recently asked by Bloomberg L.P. ("Bloomberg") to provide an industry expert's perspective on the practice of "neighborhooding" by various multichannel video

programming distributors (MVPDs), and to develop an opinion as to whether Comcast Cable Communications, LLC ("Comcast") should be viewed as engaging in this practice. Further, I was asked to opine on the alternative descriptions and definitions of news channel neighborhooding advanced by Bloomberg and Comcast in these proceedings. Finally, I was asked to provide an opinion on whether certain types of networks do or do not constitute "news channels" within the context of the news neighborhooding issues in this proceeding.

7. I have reviewed the Answer of Comcast in the above-captioned proceeding, including the Declaration of Michael Egan, the Declaration of Mark A. Israel and the Declaration of Jay Kreiling. In addition, I have reviewed the Complaint submitted by Bloomberg, along with the websites of selected MVPDs (including Comcast) and programming networks.

I. Definition of a Programming Neighborhood

8. I am not aware of a generally-accepted specific definition of the term neighborhooding within the subscription television industry. Even so, it is my experience that neighborhooding can and should be defined as the practice of grouping channels by programming genre in order to enhance and facilitate the subscriber viewing experience. In this respect, I generally concur with Comcast's expert, Mr. Egan, who states that "neighborhoods of channels are designed to enhance the viewing experience by more easily allowing the user to remember … where to go 'on the dial' for the genre he/she is seeking at the moment and then, once there, to easily 'surf' within the genre."[1] Further, I believe, like the Commission, that a channel grouping may qualify as a neighborhood by either containing a significant number or a significant percentage of channels in a particular genre. To the extent that Mr. Egan contends that it is not necessary for a channel

[1] Egan Declaration at ¶ 12.

grouping to include a "fixed number of channels" in order for the grouping to achieve the objective of enhancing the viewing experience and thereby appropriately be considered a neighborhood, I agree with that view.[2] However, to the extent that Mr. Egan maintains that, in determining whether a channel grouping constitutes a neighborhood, one should look only to the percentage of channels of a particular genre that are in the channel grouping and ignore the number of channels of a particular genre that are in that grouping, I disagree with that view.

9. Based on the definition outlined above, it is my opinion that the Comcast news channel groupings identified by Bloomberg in Exhibit H of its Complaint would be recognized as neighborhoods by those in the MVPD industry. Channel groupings that feature at least four (and, on average, five) news channels either consecutively or within a grouping that contains only one non-news channel are clearly designed to enhance and facilitate the subscriber viewing experience by making it easier for subscribers to locate, remember the location of, and navigate these channels. A grouping of this size within the 1-100 channel range is especially significant because many cable subscribers are accustomed to tuning first to these channels when considering their viewing options and/or receive most of their channels within that range. In short, it is my opinion that these channel groupings contain a significant number of news channels.

10. Further, Exhibit H indicates that these channel groupings typically contain some or all of the most viewed news channels, including CNN, Fox News, HLN, CNBC and MSNBC. In my opinion, the presence of these "anchor networks" increases both the importance of the

[2] At the same time, I recognize that, for the purposes of a proceeding such as this one, it may be useful or necessary to establish a benchmark such as that suggested by Bloomberg in order to determine the presence and prevalence of news neighborhoods.

groupings from the perspective of subscribers and, correspondingly, increases the groupings' effectiveness in serving the purpose of a news neighborhood.

11. Moreover, I disagree with Comcast's assertion that a grouping of channels generally needs to include 10 or more channels, or to include two-thirds or more of a service provider's news channels, in order to be considered a neighborhood. Comcast notes that certain MVPDs (principally DIRECTV, DISH Network, Verizon FiOS and AT&T U-verse – none of which are traditional cable operators) offer news neighborhoods that feature 10 or more news channels. At the same time, Comcast's expert Mr. Egan acknowledges that of the rest of the Top 14 MVPDs (nearly all of which are traditional cable operators) only a select few provide news channel groupings that are this comprehensive. In so doing, neither Comcast nor Mr. Egan attempted to analyze (or at least did not report) the degree to which the rest of the Top 14 MVPDs utilize genre-based channel groupings in order to enhance the subscriber viewing experience in a manner similar to that employed by Comcast. To conclude that the practice of a minority of providers (each of which has key technological and market-positioning distinctions from Comcast) represents some sort of industry "standard" makes no sense. Rather, these providers are more appropriately viewed as operating at the industry "cutting edge" in terms of neighborhooding, while the much more common (and longstanding) practice of grouping smaller collections of channels by genre in the manner identified by Bloomberg on Comcast systems and the systems of other cable operators, such as Charter, Cox, and Cablevision, should logically be viewed as the "standard" for the determination of a neighborhood.

12. The above discussion highlights an important consideration about the distinctions between MVPDs and the ongoing evolution of program network packaging and neighborhooding in the MVPD industry. Exhibit E of Mr. Egan's Declaration is an AT&T Cable channel lineup from

2002 that illustrates this company's extensive use of genre-based channel groupings (i.e., neighborhoods) nearly a decade ago. Mr. Egan uses this attachment in an effort to illustrate that Comcast's programming lineups are "the vestiges of a practice abandoned when the cable systems evolved from analog to digital video distribution technology."[3] However, it would appear that Comcast is still employing this practice (at least with respect to news channels); and that it has thus not been "abandoned."[4] More importantly, the genre-based neighborhoods cited for selected MVPDs (e.g., DIRECTV, DISH Network, Verizon FiOS, and AT&T U-verse, etc.) merely reflect the ongoing evolution of the genre-grouping concept in instances where these providers have substantially increased the total number of channels included in selected programming packages.

13. Mr. Egan's Exhibit E also provides a clear illustration of the fact that groupings of four or more news channels in sequence almost invariably represent the result of a deliberate decision to organize channels by genre. It is my experience that this practice has existed within the MVPD industry for many years, is employed by many MVPDs and reflects pervasive industry recognition of the benefits to subscribers of such designs. The benefits of channel groupings to subscribers in turn benefit cable operators to the extent that improved subscriber satisfaction enables operators to more effectively retain customers that might otherwise switch to competing distributors. In addition, to the extent that grouping channels by genre encourages greater viewing of networks within the neighborhood and/or "sampling" of networks in the neighborhood that

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[3] Egan Declaration at ¶ 28.

[4] Moreover, I am not so disdainful of the programming strategies and practices of Comcast (the nation's largest MVPD and a leader in industry innovation) as to imply that they are in essence antiquated.

were previously unfamiliar to the subscriber, this can in turn benefit advertisers on those networks and increase the advertising value realized by both the networks and cable operators.

14. Finally, in my experience it is common knowledge within the industry that some programming networks recognize the value of channel position and actively encourage placement next to other networks in the same genre, other networks that they own, extremely popular networks and/or some combination of these. As a very basic example, these considerations (for both operators and programmers) are why it is very common to find ESPN and ESPN2 located next to each other in a channel lineup. Based on my experience as outlined above, I was not at all surprised that Professor Gregory Crawford concluded that the statistical probability of news channel groupings like those found on a large majority of Comcast systems occurring by random chance is infinitesimal. Rather, it is clear to me (regardless of any statistical analysis) that these groupings were assembled and have been maintained with a clear purpose.

II. The Potential Number and Composition of News Neighborhoods

15. Comcast asserts that having more than one news neighborhood is "fundamentally at odds with the concept of neighborhooding."[5] In addition, Comcast's expert Mr. Egan concludes that "a truly effective news neighborhood might well require inclusion of two-thirds (66%) or more of the news channels."[6] I disagree with both of these assertions, for the reasons discussed below.

16. First, it is perfectly reasonable for an MVPD to design multiple neighborhoods featuring channels that fit within a broadly-defined genre such as news. This could occur because the MVPD seeks to segment the genre into two or more "sub-genres." For example, sub-genres

[5] Comcast Answer at ¶ 62.

[6] Egan Declaration at ¶ 13.

(and, by extension, two neighborhoods) within the news category might reasonably consist of general news channels and business news channels or could be defined to include a neighborhood of news channels as distinct from a neighborhood of public affairs channels.[7] Alternatively, multiple neighborhoods might be found in instances where some news networks are included at one level, while another group of news networks are offered at another level.

17. Second, I disagree with the suggestion that at least two-thirds of all of an MVPD's news channels must be in a single neighborhood in order for the neighborhood to be "effective" based on the neighborhood definition I presented above. In my experience, by including even a few of the most recognizable, most often viewed networks in a channel grouping, an MVPD readily establishes a destination that viewers can and do recognize as "where the news channels are." This is clearly the case with Comcast's news neighborhoods, as Professor Crawford's analysis illustrates that the four or more networks in Comcast's news neighborhoods typically consist primarily of those news networks (i.e., Fox News, CNN, HLN, MSNBC, and CNBC) that are, in my experience, most familiar to subscribers and are presently the most heavily viewed. In the context of these factors, I find the percentage of Comcast's news networks that are typically included within news neighborhoods identified by Bloomberg in Exhibit H to its Complaint to be significant, and would expect that this neighborhood composition would often be viewed as effective from the perspective of the subscriber/viewer.

18. Along with the "percentage" assertion, Comcast suggests that assessing a channel grouping's 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

[7] It is worth noting that the groupings in Mr. Egan's Exhibit E feature both a "News & Information" neighborhood and a "Civic" neighborhood.

found elsewhere on the system."[8] In evaluating this assertion, it is important to consider the fact, as described above, that Comcast's news neighborhoods typically include the most familiar news networks. As a result, I believe it is very possible that subscribers could conclude that other news channels would not be found on the system. Beyond this, I believe the more important and relevant consideration is whether subscribers might conclude from their placement in the neighborhood that these news channels are the only news channels of value and/or that are likely to be of interest to them. (Even if subscribers might believe that some other news channels are scattered throughout the channel lineup, they may be less likely to seek out these networks since those in the neighborhood are easier to find and to surf among.) In fact, the prospect that subscribers might logically reach such conclusions or surf only within the neighborhood is a principal reason why the failure to include an independent news network in such a neighborhood is potentially so damaging.

III. What is a News Channel?

19. There are many programming networks that contain varying levels of "news" or informational content, as well as a wide range of networks that might be considered to offer "public affairs" programming. As such, it is not surprising that Comcast and Bloomberg have arrived at different conclusions in this proceeding as to what constitutes a news or public affairs channel, and as to how many such channels are carried on Comcast's various systems. My perspectives, based on my experience in the industry, regarding several specific issues that have been raised about the definition of a news channel are presented below.

20. First, for purposes of evaluating news neighborhooding and the percentage of an MVPD's news channels contained within a neighborhood, I believe that public, educational and

[8] Comcast Answer at ¶ 53.

governmental access (PEG) channels should be excluded from consideration. In my experience, the manner in which these channels are programmed (and even if they are programmed in a traditional sense) varies widely from market-to-market, and they are generally not included in groupings of news channels on cable operators' channel lineups. Rather, I believe it is more appropriate to include, as Bloomberg has done, only those local or regional public affairs services (such as the California Channel and others) that are known to provide a consistent schedule of public affairs programming along the lines of the national public affairs programming delivered by the C-SPAN networks.

21. Second, I believe it is essential to exclude both foreign language news channels and high definition (HD) feeds of standard definition (SD) news channels from consideration.

22. In the case of foreign language news channels, these networks are most often included in so-called multicultural packages and/or are intentionally located with a grouping of other multicultural networks of varying genres. Thus, in my experience they would not commonly be thought of as potential candidates for a hypothetical news neighborhood even if the MVPD's goal was to include "all" news networks in the hypothetical neighborhood.

23. In the case of HD feeds, these channels are nearly always merely simulcasts (with enhanced signal quality) of the SD feed of the network, are typically located in a different part of the overall channel lineup (i.e., separate from all other SD programming), and are often available only as part of a specific HD service package that requires an HD-capable set-top receiver.

24. Third, it is my experience that sports news networks (such as ESPNews) are commonly included in sports channel groupings. Specifically, I am aware that each of the four MVPDs that Comcast emphasizes with respect to neighborhooding places ESPNews in its sports neighborhood rather than its news neighborhood.

25. Fourth, I considered whether networks that focus primarily on weather and weather-related programming should be considered news networks for purposes of evaluating neighborhooding. With specific regard to The Weather Channel, it is my experience that industry professionals do not generally think of this network as a "news channel." At the same time, I recognize that weather programming does play an important role in the overall news landscape. Thus, it is my opinion that reasonable arguments can be made for both including and excluding The Weather Channel in a comparison of news channels and news neighborhoods. In contrast, I believe it is unlikely that industry professionals would include 24-hour local radar services or forecast streams that may be found on certain digital subchannels delivered by local broadcast stations (and carried by cable operators pursuant to retransmission consent obligations) in such a comparison.

26. Finally, I was asked to specifically consider the characteristics of the Current TV network. Based on my review of Current TV's website and programming schedule, this network offers limited traditional news programming, and focuses primarily on a combination of documentary and reality programming. In my view, this programming (taken as a whole) differs substantially from the content found on the news and business news channels that are typically included in news channel groupings, as well as from the public affairs programming on networks such as the C-SPAN family. As such, I would not characterize Current TV as a news network for purposes of news neighborhood comparisons.

IV. Conclusions

27. For all of the reasons noted above, I conclude that the Comcast news channel groupings identified by Bloomberg (i.e., those identified in Exhibit H to Bloomberg's Complaint) are in fact news neighborhoods, and that these groupings are significant from the perspective of subscribers and, by extension, operators. Moreover, I disagree with the notions advanced by

Comcast that news neighborhoods may only exist where both a very large number and a very large majority of all of the news networks carried by an MVPD are contained within the neighborhood.

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

Dated: August 29, 2011

James Trautman

ATTACHMENT A

JAMES M. TRAUTMAN
Managing Director and Principal

Bortz Media & Sports Group, Inc.
4582 S. Ulster St., Suite 1340
Denver, Colorado 80237
303-893-9903 (Direct)
trautman@bortz.com

EXPERIENCE:

Managing Director and Principal, Bortz Media & Sports Group, Inc. (1988 to Present)

- Leads media/entertainment practice for analytically-based consulting firm.

- Expertise is concentrated in applied economic, market and competitive analysis – focusing on programming and programming networks; analysis of industry, company and product/service economics; evaluation of trends in media/entertainment market evolution; market forecasting/demand assessment; and market research.

- Extensive consulting history for a wide range of major media organizations is combined with considerable experience in expert testimony and litigation support.

Additional detail on primary areas of expertise includes:

Expert Testimony/Litigation Support

Has provided comprehensive analysis and expert testimony for multiple law firm clients including Arnold & Porter; Winston & Strawn; Manatt, Phelps & Phillips; Snell & Wilmer; Davis Wright Tremaine; Holme, Roberts & Owen; Dow, Lohnes & Albertson and Baird Holm. Support and testimony has encompassed assessment of programming and programming networks; valuation of media assets and properties; economic and market analysis of media industries, technologies and planned business ventures; analysis of industry and firm-level business practices and strategies; and design/execution of market research. Examples include:

- *United States Copyright Office.* On an ongoing basis over the past 20 years, has developed and provided comprehensive expert analysis and testimony in numerous adversarial proceedings before the U.S. Copyright Royalty Board (and its predecessors), primarily addressing the allocation of more than $200 million in annual copyright royalties among the owners of selected television programming. During this period, my analysis and testimony has contributed to a threefold increase in the share of annual copyright royalties allocated to my primary client. Specific elements of the analysis and testimony have included the following:

  - ✓ Testimony addressing the relative market value to the cable and satellite television industries of various television programming types.
  - ✓ Testimony addressing the factors that influence the programming carriage decisions of cable operators and satellite distributors, including detailed

evaluation of carriage patterns and market considerations affecting cable networks.

- ✓ Testimony identifying and evaluating comparative metrics for assessing programming value, and identifying and evaluating marketplace transactions and their economic relevance to the proceedings.

- ✓ Testimony addressing the evolution of and prospects for the cable and satellite industries.

- ✓ As a basis for testimony, completion of ongoing industry level economic and market analysis that has resulted in the creation of comparative metrics indicative of relative market value, and design and management of annual market research among cable television executives.

- ✓ 17 instances of written and oral testimony, including three appearances in two separate proceedings in 2010 and 2011.

- ❑ *Schonfeld v. Hilliard, et al.* Provided expert support, written and deposition testimony addressing the market/economic prospects for and potential value of a television programming network. Analysis detailed the operating economics of a start-up/early stage news network, as well as the market factors influencing the distribution potential, licensing value and cost structure of the network.

- ❑ *Northland Communications Corporation et al v. MTV Networks.* Provided expert support, written and deposition testimony addressing the licensing value of several television programming networks, as well as the influence of scale economies and other industry structural characteristics on the license fees charged to various classes of programming distributors.

- ❑ *In Re Scientific-Atlanta, Inc. Securities Litigation.* In 2008 and 2009, provided comprehensive expert support, written testimony and deposition testimony on behalf of manufacturing firm Scientific-Atlanta, Inc. (a Cisco subsidiary) in connection with ongoing class action litigation. Support and testimony evaluated cable industry financial performance, growth characteristics, technology trends, marketing practices, supplier characteristics and other factors as a basis for determining whether Scientific-Atlanta's internal growth projections and public representations during the class period were reasonable.

- ❑ *USA v. Barford, Kalkwarf and Smith.* Provided comprehensive expert support over a three-year period on behalf of an individual defendant in connection with an action brought by the Justice Department against Charter Communications and several Charter executives. Support related to a variety of issues including subscriber growth expectations and results for Charter and the market conditions that affected those expectations.

- *Charter Communications Holding Company, LLC, and Charter Communications Operating, LLC v. DIRECTV, Inc.* Provided expert analysis, a written expert report and deposition testimony on behalf of DirecTV in connection with a false advertising claim brought against the company. This analysis evaluated the current operating performance and future operating prospects of one of the company's competitors by comparing the performance of the competitor to key industry benchmarks and the performance of its peers.

- *Alabama TV Cable, Inc. v. Locust Mountain Partners, II, LP, et al.* Provided written testimony addressing the fair market value of selected cable television systems, and rebuttal testimony discussing the economic and market factors that influence market value.

- *Gramercy Park Investments, et al v. Jones Intercable, Inc., et al.* Provided written testimony addressing the fair market value of several cable television systems.

- *Charter Communications, Inc. v. James H. ("Trey") Smith, III.* Developed written testimony addressing cable television industry business and marketing practices.

- On multiple occasions, provided expert support in similar litigation in which settlements were reached prior to submission and/or preparation of testimony.

Industry and Firm-Level Economic, Market and Competitive Analysis

Retained by dozens of major clients including A&E Television Networks, Blackstone Group, CBS, Comcast, Corporation for Public Broadcasting, Cox Communications, Discovery Communications, Disney/ABC, ESPN Networks, Gannett, Landmark Communications, MTV Networks, Ziff-Davis, Times Mirror, Time Warner, Tribune, The Washington Post Company, Major League Baseball, the National Basketball Association, the National Cable & Telecommunications Association, the Big 12 Conference, Crown Media, Scripps Networks, National Public Radio, Public Broadcasting Service (PBS) and the United States Olympic Committee (USOC). Example of projects and consulting services include:

- Provided business development support to and/or evaluated market prospects for more than 50 proposed subscription TV programming ventures and existing basic and premium television networks. Assignments have addressed both national networks and regional sports and news networks. Clients/properties have ranged from planning stage concepts (e.g., Outdoor Life – now Versus, U.S. Olympic Network) to services in the early stages of development (e.g., ZDTV – now G4, Classic Sports Network – now ESPN Classic) to widely penetrated networks such as ESPN and Discovery. Assignments have encompassed initial business planning, marketing/sales planning, affiliate contract negotiations, programming strategy and content acquisition, and service implementation.

- The economics and marketing of programming tiers, competitive services and new television products has been an ongoing focus. Examples of tiering and new product-related assignments include:

  - ✓ Designed and managed consumer research and provided recommendations to Comcast regarding the composition, packaging and pricing of the company's initial digital service tiers in preparation for the deployment of digital settop boxes.

  - ✓ For a major content owner, evaluates media market trends and implications on an ongoing basis. The implications of tiering, channel placement and ownership of the organization's network distribution outlets has been a specific focus. Mobile distribution opportunities and economics, on-demand economics and interactive advertising prospects have also been assessed recently.

  - ✓ For multiple clients, assessment of the relative merits of cable HFC distribution infrastructure and telephone company fiber optic network architecture from a consumer perspective, emphasizing the relative advantages and disadvantages of each technical approach in terms of services and features provided to subscribers. Based on this assessment, developed detailed recommendations regarding client positioning and communications strategies in response to telephone company marketing initiatives.

  - ✓ For multiple clients, assessment of Internet-based video content distribution prospects, considering both economic opportunities and potential risks to existing distributors. Analyses have specifically addressed Internet-based delivery of movies and other television programming and its implications for cable networks and video-on-demand services.

  - ✓ For Cox, provided a comprehensive assessment of current and likely future satellite competitor technology and marketing/promotional initiatives as a basis for devising Cox product, packaging and marketing strategies.

  - ✓ Also for Cox, analyzed HDTV opportunities and timing considerations with respect to initial deployment of HDTV services.

  - ✓ Assessment of home video rental market trends and prospects in the context of the evolution of cable-based video-on-demand services.

  - ✓ Assessment of the premium television market, including prospects for major premium TV providers and the impact of movie distribution alternatives (including video-on-demand, Netflix and Internet-based services) on premium television content strategies.

- Co-author of Digital Broadcasting: Where Do We Go From Here? This report, released in 2010, evaluated future business prospects and market opportunities for the broadcast television industry – focusing on multicasting, mobile video and other services enabled by digital transmission technology.

- On behalf of the National Cable & Telecommunications Association (NCTA), authored An Analysis of the Cable Industry's Impact on the U.S. Economy. This comprehensive economic impact analysis, released in 2011, analyzed cable industry subscriber growth patterns and operating characteristics and utilized input-output modeling techniques to evaluate cable industry financial flows. These flows were than used to quantify the industry's direct and indirect contributions to U.S. employment, personal income and gross economic output at the national level as well as by individual Congressional District. Earlier versions of this analysis were prepared in 2008, 2003, 1998, 1990 and 1986.

- Created and has directed Bortz Media's subscription television industry competitive assessment practice since launching this practice in 1996. Services provided to major cable companies have included ongoing analysis of wireline, satellite and other competitors, addressing strategies, economics, technical capabilities/constraints and the overall threat profile presented by market-level cable competitors. In connection with these engagements, have developed market level strategic and tactical plans for cable operators to address competition. These analytical and planning efforts have emphasized competitor economics and consumer marketing strategies, as well as the development/deployment of new consumer products and technologies including digital settop boxes, DVRs, video-on-demand, HDTV, interactive television, high-speed Internet and telephone service.

- Analyzed the fair market value of television, radio and Internet rights for major professional and college sports organizations. Selected clients have included the NBA, NHL, MLB, MLS, NASCAR, PGA Tour, PBR, PRCA, Big East, Big 12, the WSOP and many local professional franchises. Engagements have represented over $20 billion in rights values.

- For a major broadcast network, assessed digital television opportunities, considered technological and market factors in defining a digital television strategic focus, and developed recommendations relating to cable distribution of digital signals and high definition programming.

- Provided comprehensive digital transition business planning assistance to the Corporation for Public Broadcasting, the Association of Public Television Stations, the Ford Foundation, the James Irvine Foundation and selected individual public broadcasters. These assignments assessed new service opportunities and involved working with individual public television (PTV) stations to develop digital service/financial models. Elements of the projects included assessment of the overall media environment and its implications for PTV (focusing on the impact of emerging technologies), exploration of digital capacity utilization issues and alternatives

(including data-driven, interactive and commerce-based applications), and evaluation of partnership opportunities with both for profit and non-profit entities.

- Assisted various other public broadcasting organizations in numerous engagements over the past 20 years. In addition to the assignments noted above, these have included development of comprehensive market analyses, development of service and operating structure recommendations for stations, evaluation of advertising potential, assessment of merchandising and licensing practices, support in negotiations for programming distribution, and assessment of Internet business opportunities.

- Completed a comprehensive, multi-phase assessment of digital radio opportunities, addressing the market potential for both terrestrial and satellite-delivered digital radio.

- Analyzed financial prospects and estimated the fair market value of numerous commercial television station properties, including both network affiliates and independents in markets ranging from the largest to the smallest. Analyses evaluate market trends and likely future market capture in terms of both advertising revenue and audience, resulting in the development of pro forma financial projections.

- Provided strategic planning assistance to Landmark Communications on multiple occasions, supporting the company's efforts to enhance its television station operations.

- In the mid-1980s, developed and conducted an annual Cable Operating Performance Benchmarks study for participating cable companies on behalf of the National Cable & Telecommunications Association. This study focused on the interrelationships between operating characteristics and financial performance at the cable system level, utilizing detailed operating, financial and market information from more than 150 separate cable systems. Separate industry level analyses have addressed the industry's economics and financial characteristics on numerous subsequent occasions.

- Analyzed financial prospects and estimated the fair market value of over 100 cable television properties both domestically and internationally. Assessments of current and future cable television economics have also been developed on a recurring basis for a major financial institution, as well as an international consulting organization.

- Designed, managed and executed a wide range of quantitative and qualitative research studies, including statistically representative national (as well as local and regional) telephone surveys, Internet-based surveys, focus groups, one-on-one interviews and new product trials.

Senior Associate, BBC, Inc. (1983 to 1988)

Responsible for execution of multi-faceted research and analytical assignments addressing industries including media, entertainment and telecommunications, real estate, banking and public facilities/recreation.

EDUCATION:

M.B.A., Finance (1990), University of Colorado
B.S., Economics (1982), Claremont McKenna College, Claremont, California

OTHER:

Author of Digital Broadcasting: Where Do We Go From Here?; An Analysis of Cable Television's Impact on the U.S. Economy; and Public Television's Transition to a Digital Future. Co-Author of Public Television in the Information Age; Great Expectations: A Television Manager's Guide to the Future; and Sports on Television: A Whole New Ballgame.

EXHIBIT C

FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Complaint of	)	
	)	
BLOOMBERG L.P.	)	MB Docket No. 11-104
	)	
v.	)	
	)	
COMCAST CABLE COMMUNICATIONS, LLC	)	
	)	
	)	
	)	

DECLARATION OF DAVID GOODFRIEND

I, David Goodfriend, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is David Goodfriend. My business address is 1300 19th Street, N.W., 5th Floor, Washington, D.C. 20036.

2. I am President of Goodfriend Government Affairs and represent clients before the U.S. Congress, the Federal Communications Commission, the White House, the U.S. Department of Commerce, the U.S. Department of Agriculture, and various state legislatures on telecommunications and renewable energy issues. My clients include Fortune 500 companies, such as DISH Network and Lennar; start-up companies, such as independent programmer nuvoTV (formerly SiTV); and non-profit advocacy groups. Through my various government and corporate positions, I have gained experience, knowledge and expertise regarding various aspects of media company operations, as well as the fundamental policy reasons underlying government actions related to media issues. I am also a regular commentator and contributor to Sirius Radio, Fox Business, Fox News, CNBC, and MSNBC.

3. I held executive positions at DISH Network, L.L.C., the third-largest Multichannel Video Programming Distributor ("MVPD") in the U.S., from 2001-03, and 2004-08. During that time, I held the following positions: Director of Programming; Director of Legal and Business Affairs; Director of Business Development; and Vice President of Law and Public Policy.

4. During my tenure at DISH Network, I worked on numerous programming and other content-licensing agreements, with a particular focus on start-up independent networks. In addition to my work on conglomerate and niche on-demand content agreements for linear video and online/on-demand content services, I was responsible for negotiating the license agreement with BridgesTV and other independent programmers, and worked on the team selecting non-profit, educational set-aside channels. I also worked on the proposed merger between DISH Network and DIRECTV/Hughes, reviewing numerous programming agreements and related documents as part of the document review process.

5. In my role reviewing and negotiating programming agreements, particularly as DISH's Director of Programming, I paid attention to details surrounding tier and channel placement, which I found to be particularly important issues for new, independent programmers. Channel placement was important to new, independent programmers because it had a direct impact on viewership and therefore advertising revenue (i.e., better channel placement resulted in higher ratings which in turn resulted in higher advertising revenues). My programming-related duties included negotiating the terms and conditions of carriage on DISH Network, which invariably led to discussions surrounding channel placement, since to programmers this was valuable element of the agreement.

6. From 2003-04, I co-founded and served on the executive team of Air America Radio, the nation's first commercial progressive talk radio network, including roles as Executive Vice

President, General Counsel, and interim CEO. I was responsible for negotiating all network affiliation agreements with terrestrial radio stations and satellite radio services (XM Satellite Radio became the exclusive satellite radio distributor of Air America Radio at the network's launch). This specifically entailed working with radio station ownership groups and satellite radio providers on affiliation agreements governing the carriage of Air America Radio's network feed. While distinguishable in many respects to programming agreements with MVPDs, there were some similarities in the issues related to radio and MVPD carriage agreements. Notably, this included the channel placement of Air America Radio on XM Satellite Radio's channel lineup, since in both instances channels are arranged serially on a programming guide/subscriber interface; channels often are grouped together in neighborhoods of similarly themed channels; and some parts of the channel lineup are more valuable than others with respect to garnering audience share.

7. I served as Media Legal Advisor to Federal Communications Commissioner Susan Ness from 1999-2001. Among other things, I advised the Commissioner on transactions including CBS/Viacom, AOL/Time Warner, AT&T/TCI, AMFM/Clearchannel, and other smaller transactions. In that capacity, I gained experience and understanding regarding the principles and policy rationale underlying FCC merger review and associated conditions imposed related to mergers, including the impact on the independent programming market of large-scale media mergers.

8. In addition to my service at the Federal Communications Commission, my other government positions included Deputy Staff Secretary to President William Jefferson Clinton (1998-99); Professional Staff Member to the Senate Government Affairs Committee (1991-93); and Professional Staff Member to the House Select Committee on Narcotics Abuse and Control (1990-91).

9. I received my J.D., *cum laude*, from the Georgetown University Law Center (1997) and there served as an editor on the American Criminal Law Review. My B.A. *summa cum laude* is from Beloit College (1990); and I was a fellow at the University of Chicago School of Business (1989).

10. I was recently asked by Bloomberg L.P. ("Bloomberg") to provide an opinion on several programming issues including (i) the practice of neighborhooding and what constitutes a neighborhood in the MVPD industry; and (ii) what channels are viewed as news channels. I have also reviewed Bloomberg's Complaint and the Answer of Comcast Cable Communications, LLC in the above-captioned proceeding, including all exhibits and attachments.

11. In what follows, I explain the practice of neighborhooding, how many channels and channel genres are viewed, and review what channels are considered news channels.

I. WHAT IS A NEIGHBORHOOD?

12. I generally agree with Mr. Egan, Comcast's expert, that there is no "generally-accepted definition of a news neighborhood among industry professionals." Answer, Ex. 4 at ¶ 11. Unlike Mr. Egan, however, it is my experience that the clusters of channels identified by Bloomberg in Comcast's channel lineups would be considered neighborhoods of similarly-themed, or same-genre, channels. As I explain in more detail below, even a cluster of three channels can be a neighborhood. The quality of a neighborhood, however, probably varies based on how completely it captures a subscriber's expectation to find similarly-themed channels close, if not contiguous to each other.

13. In my opinion, the 368 groupings of at least four news channels in a block of five identified by Bloomberg in Exhibit H would constitute a neighborhood of news channels. Based on

my experience in the MVPD Industry, these groupings would normally be viewed as neighborhoods since they contain several news channels within the same general block of channels.

14. In my opinion, a group of at least four news channels in any five channel positions is large enough to attract viewers in search of news programming and to suggest that the grouped channels share a common genre. It is my experience that viewers would more easily remember the general location of those channels and find them again more easily than if the channels were scattered throughout the programming lineup. Finally, when a consumer presses the "guide" button on his or her remote control device, they typically will see on the electronic programming guide ("EPG") the contiguously placed neighboring channels to the one they are watching. This is particularly important in the news category because during a breaking news story, the viewer might want to get another network's perspective on the story quickly or switch to another network during commercial breaks. A neighborhood of news channels help to facilitate that consumer behavior. As a result, being in the same grouping with the most popular news channels is particularly important for new independent news channels who are then much more likely to be found. Moreover, during a breaking news story, channels not included in the neighborhood are at a significant disadvantage, as they are much less likely to be found.

15. Because viewers use their remote controls to "surf" or "flip" between channels as well as to pull up electronic programming guides that organize listings by channel number and automatically focus on the channel being viewed, channels benefit simply from being located in close proximity to other channels of the same genre. Also, if a channel has particularly good ratings, other similarly themed channels will benefit from being placed near that channel within the same neighborhood.

16. According to the data I reviewed to prepare this report, the five news channels most commonly carried in the 368 channel groupings identified by Bloomberg in its Complaint are Headline News ("HLN"), CNBC, CNN, Fox News, and MSNBC. Based on my experience, these are the five most popular news channels.

17. In my opinion, a grouping containing four of these five news channels would easily qualify as a neighborhood for several reasons. First, four channels is a significant enough block to garner a viewer's attention. For example, at least four channels placed together can typically be seen at the same time when looking at a program guide. Second, these channel groupings are where subscribers are most likely to turn in order to view news programming. Thus, it is likely that viewers would recognize and remember to go to this grouping for their news needs.

18. The neighborhooding practice applies to genres other than news and can manifest itself in relatively small numbers of channels grouped together. For example, in my experience a grouping of at least four sports channels in any block of five channel positions would constitute a sports neighborhood, as would a grouping of at least four channels aimed at children in any block of five channel positions. Indeed, that is why so many MVPDs carry such sports and children neighborhoods.

19. From my experience as founder and Chairman of the non-profit consumer advocacy group, Sports Fans Coalition, I know that sports fans tend to look for sports programming within distinct channel groupings, including groupings of at least 4 channels. For example, I have heard complaints from sports fans that they are annoyed when surfing through a series of sports channels and some games are located elsewhere. In my opinion, this reflects a consumer preference to find sports programming channels grouped together and a negative consumer reaction when one of those channels is unavailable in that grouping.

20. Based on my experience, neighborhoods containing at least one-third of the news channels on a headend likely would be considered by subscribers as an important destination for news consumption, especially when they contain the most widely viewed news channels. I disagree with Comcast's assertion that only a grouping of "all or a substantial majority" of news channels qualifies as a neighborhood. Comcast asserts that the Commission should assess the importance of a channel grouping, "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." Answer at ¶ 53. In my opinion, a neighborhood can be comprised of few channels, and there can be more than one neighborhood of the same genre on a channel lineup. The material question is whether an MVPD's neighborhooding practices are helpful to the consumer. A larger neighborhood may be more consumer-friendly than two smaller neighborhoods, but in every such instance, the MVPD has created a neighborhood of similarly-themed channels to garner the viewer's attention.

21. In his Declaration, Mr. Egan identifies four MVPDs that he claims have set the "industry standard" for neighborhooding: DirecTV; Verizon; AT&T U-Verse; and Insight. *See* Answer, Ex. 4 at ¶¶ 19, 22. He notes that "[e]ach 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 neighborhood might well be at least 70%." *Id.* at ¶ 19. While Mr. Egan concludes that only such comprehensive groupings are neighborhoods, I believe he is merely showing that some MVPDs' neighborhooding practices are more consumer-friendly than others. Like any other variable of MVPD quality, such as waiting-time on a service line or for an installer to arrive, the comprehensiveness of a neighborhood goes directly to whether a consumer will be satisfied with the product, not whether channel neighborhoods exist. The "look and feel" of a service can be impacted by how channels are organized and the appearance

on the EPG. I believe that the EPG of DISH Network, for example, generally is superior to that of Comcast in part because channels are grouped more logically and neighborhoods of like-themed channels are larger. Thus, in my opinion, Mr. Egan's conclusions reflect differences in quality between various neighborhoods but not the existence or absence of neighborhoods. In fact, in my opinion, the addition of other new channels into the existing news neighborhoods on Comcast headends will be a benefit to consumers as it will become a larger neighborhood with news channels grouped more logically and news channels will be easier to find.

22. A neighborhood can consist of only three contiguously located channels. I have had direct experience with creating a neighborhood of three contiguous channels that showed all the effects of neighborhooding at work, even within a very small cluster of channels. During 2006-07, while I was serving as Vice President of Law and Public Policy for DISH Network, the cable TV industry appeared to be increasing its lobbying at the state level to impose what we viewed as discriminatory sales taxes on satellite TV subscribers. Working with my counterparts at DIRECTV, we created a new channel of text alerting satellite subscribers that their state legislature was contemplating such a tax and providing the main phone number for that state legislature (we also did the same thing nationally and provided the phone numbers of relevant Members of Congress). We deliberately placed this channel between C-SPAN and C-SPAN 2, on both DISH Network and DIRECTV, since we hypothesized that more politically active subscribers would watch these channels and "surf" between the two of them. Finally, we created a new channel number[1] and name ("NOTAX") to place within the EPG between C-SPAN and C-SPAN 2. The results exceeded our expectations. In Michigan, for example, the state legislature was flooded with phone calls protesting

[1] As I recall, the engineering staff was able to insert a new channel between two contiguous existing channels with relative ease. My recollection is that they put the substance of the new, NOTAX channel in the datastream from the satellite. Then through software and/or engineering, they were able to make the new channel appear on the EPG as located between CSPAN and CSPAN2.

the imposition of the discriminatory satellite tax. In Congress, the members of the relevant subcommittee whose phone numbers we listed asked that we please take down the slate because they were being overwhelmed with calls. Thus, in this particular case, I believe that three channels constituted a neighborhood of public affairs programming; that subscribers "surfed" between like-themed channels and therefore came across the DISH/DIRECTV NOTAX channel and that the effect of contiguous grouping on the EPG was materially demonstrated by the number of subscribers who took action in response to the new channel.

23. Similarly, my client, nuvoTV, is an English-language, Latino-themed programming service that has negotiated placement in a small neighborhood with similarly themed channels such as Mun2 rather than general Spanish-language services..

24. In conclusion, based on my experience in and knowledge of the MVPD industry, Comcast does appear to organize its news channels by genre into groups commonly referred to as neighborhoods. (Moreover, the same is true with respect to Cablevision, Charter, and Cox.) Industry practice shows that there are generally two types of news channel groupings found on MVPDs' channel lineups. The 10-15 channel neighborhoods located above channel 100 identified by Mr. Egan, and the 4-6 channel neighborhoods located below channel 100 that are often found the headends of Comcast and other cable operators. Although the neighborhoods identified by Mr. Egan are certainly larger than the neighborhoods identified by Bloomberg, both result from deliberate decisions to group channels by genre, both are designed to capture the attention of viewers, both are designed to help viewers find and remember the location of news, and most importantly, the comparatively smaller neighborhoods contain a significant number of the most popular news channels. As such, both would clearly qualify as neighborhoods.

II. WHAT CONSTITUTES A NEWS CHANNEL?

25. Comcast includes many types of channels in its definition of a news neighborhood. In my opinion, however, such channels need not be included in a channel grouping in order to create what a consumer would consider to be a news neighborhood. Having reviewed Comcast's answer and the corresponding channel line-ups, it is my opinion that Comcast vastly overstates the number of news channels that are carried on its headends.

26. HD Feeds – HD feeds usually are placed in a different location on the channel lineup than their standard-definition ("SD") counterparts and therefore need not be included in a news neighborhood of SD channels. This is evident on DISH Network and other MVPDs, where HD channels generally are grouped together and placed elsewhere on the EPG from their SD counterparts.

27. Sports – "Sports news channels" should be counted as sports channels rather than news channels. From my experience dealing with sports fans involved with Sports Fans Coalition, ESPNews, for example, is considered a sports channel more akin to ESPN than, say, a news channel like CNN.

28. Foreign Language – "Foreign-language news channels," Spanish-language and other foreign-language news channels, are typically located in Spanish-language and/or foreign language neighborhoods rather than with English-language news channels. I agree with Mr. Egan that "the language spoken is generally considered more important for MVPD grouping purposes than the genre . . . " Ex. 4, Attachment A, at 2-3. However, even within the multicultural space, programming and neighborhooding is increasingly sophisticated. DISH Latino, for example, offers numerous Spanish-language channels, but sorts them by geographic interest (e.g., Mexican, Colombian). My client, nuvoTV, is an English-language, Latino-themed programming service that

should not be placed in a neighborhood with Spanish-language services but rather with similarly themed channels such as Mun2. Such precisely targeted programming services and neighborhooding practices illustrate why "Foreign-language news channels" do not belong in a news neighborhood that includes channels such as CNN, CNBC, Fox News, and MSNBC.

29. PEG – Public, Educational, and Government ("PEG") channels generally are not news channels. In particular, government access channels generally do not provide much, if any, reporting or analysis. DISH Network often will group its public interest set-aside channels (in many ways the satellite industry's equivalent to PEG channels) within a neighborhood but sometimes will place one such channel (e.g., Pentagon Channel, RFDTV before it went commercial) in a neighborhood of similarly themed channels. In my opinion, PEG channels might belong within their own distinct neighborhood, or interspersed throughout the channel lineup, but in any event are not appropriate components of a news neighborhood.

30. Weather – A weather-only channel need not be included in a news neighborhood. It is my experience that weather is more of its own distinct genre. For example, in promoting their newscasts, broadcast stations advertise that they feature "news, weather, and sports," thus reflecting the widespread recognition that weather and sports can be distinguishable from news.

31. Moreover, The Weather Channel often is not promoted as a news channel but rather a weather channel, with an audience of distinct interests and demographics from channels that everyone would agree are news channels (e.g., CNN, MSNBC)

32. Similarly, I do not believe Weatherscan Local Network and other local twenty-four weather feeds constitute news channels. A channel that displays a radar screen and/or a text weather forecast twenty-four hours a day does not provide any reporting or analysis regarding news.

Indeed, it is my experience that local weather channels generally are not considered to be news channels by those within the MVDP industry.

33. Multicast Streams – In my opinion, most of the multicast channels identified by Comcast are not appropriate elements of a news neighborhood. Generally, in my experience, most multicast channels are viewed as broadcast channels by MVPDs, as evidenced by intense advocacy from the MVPD industry, including Comcast, against granting broadcasters "must carry" rights for their digital multicast programming streams. Moreover, the programming schedules of many multicast channels cited by Comcast do not, in my opinion, constitute the same news genre as, say, CNN, Fox News, MSNBC, or CNBC.

34. The following examples below are a sample of channels identified by Comcast as news but that, in my opinion, do not fit the news genre and would not be included in a channel grouping in order to create a "news" neighborhood:

- First, 26 multicast channels cited by Comcast show only local weather radar and/or forecasts and as discussed previously should not be considered news channels. Specifically, I reviewed the scheduled programming for the following channels that Comcast alleges are news channels and have determined that they should not be classified as news channels because they feature primarily local weather forecasts and/or radar: KAREDT2, KCPQDT2, KHQDT2, KSHBDT2, KSLDT3, KTCADT4, KUSADT2, KXTVDT2, Local Weather, NBC Plus, WDTVDT2, WFMZDT2, WFSBDT3, WFTVDT2, WHTMDT3, WIPBDT3, WISHDT2, WISHDT3, WJLADT2, WKRNDT2, WKYUDT3, WMARDT3, WPTVDT2, WTHRDT2, and WTSPDT2.
- I reviewed the scheduled programming for the following channels that Comcast alleges are news channels and have determined that the following channels are Public Broadcasting Service World feeds: WGBXDT2, WGBYDT2, WLIWDT3, WPSUDT3, WTIUDT2, and WVTADT4. During many parts of the day, these channels focus on cultural and information programming and should not be classified as news channels. Examples of programming featured between 6 a.m. and 4 p.m. on these channels are "Independent Lens," "Roadside Stories," "Appalachians," "400 Years of the Telescope," "The Buffalo Flows, "Fly Boys: Western Pennsylvania's Tuskegee Airmen," "the Marines of Montford Point: Fighting for Freedom," "POV," "Nature," and "Nova".
- I reviewed the scheduled programming for the following channels Comcast alleges are news channels and determined that the following channels feature community oriented or

informational programming and should not be classified as news channels: KCRT Cable, KQEDDT3, KTCADT2, KUEDDT2, City of Houston- The Municipal Channel, WGTVDT3, WHYYDT3, WKGBDT3, WNEODT2, and WTVJDT2. Examples of programming featured between 6 a.m. and 4 p.m. are "NASA Science Files," "Sidewalks: Video Nite;" "Sidewalks Entertainment," " Kaiser Permanente Specials," "The Fabulous Dorseys," "Best of Expeditions with Patrick McMillon – The Big Cypress: Walking Catfish and Diving Birds, Part Two," "Desert Speaks – Penguins in a Patogonia Desert," "Arabian Horse: The Ancient Breed," "Common Ground – Lake ADA Art Craw," "Venture North – Winter Magic in Biwabik, MN," "In the Shadow of the Acropolis," "400 Years of the Telescope," "Fly Boys: Western Pennsylvania's Tuskegee Airmen," "The Marines of Montford Point: Fighting for Freedom," "Outdoor Wisconsin," "Nova," "The Grill Sergeants," "The Buffalo Flows," and "Peter Pan: Kentucky Ballet Theatre."

- I reviewed the scheduled programming for the Community Bulletin Board channel and have determined that it should not be classified is not a news channel. The channel displays written messages submitted by local non-commercial entities.

- I reviewed the scheduled programming for the Comcast 100 channel and do not believe that it should be classified as a news channel. According to programming information available on the Internet, the channel airs paid programming between 6 a.m. and noon and carries much non-news programming at other times. Examples of programming featured include "Game of the Week" and "The Home Loft".

- I reviewed the scheduled programming for Tango Traffic and WPHLDT4, a stream of Tango Traffic. They air 24 hour programming relating to traffic conditions and should not be classified as news channels.

- I reviewed the scheduled programming WBCCDT4, which is a Public Broadcasting Service channel that focuses its programming on the arts and cultural programming. I do not believe that it should be considered a news channel.

- I reviewed the scheduled programming for LINK TV. That channel focuses on foreign cultural and informational programming and should not be classified as a news channel. Examples of programming featured between 6 a.m. and 4 p.m. are "American Shopper," "LaPaloma – The Melody of Lansing," and "World Music Blocks."

- I reviewed the scheduled programming for WNVTDT8. That channel broadcasts RT Español, the Russia Today channel in the Spanish language. WNVTDT8 should be classified as a Spanish-language channel rather than a news channel for purposes of neighborhooding.

- I reviewed the scheduled programming for WNCNDT3. That channel generally features paid and sports programming between the hours of 6 a.m. and 4 p.m. and should not be classified as a news channel.

- I reviewed the scheduled programming for the following channels and determined that they feature primarily foreign news programming: KBDIDT3, KBTCDT2, KUENDT2, WDSCDT3, WHTJDT3, WNEODT3, WNVC, WNVCDT, WNVCDT2, WNVCDT4,

WNVCDT5, WNVTDT, WNVTDT2, WNVTDT4, WNVTDT5, WNVTDT6, and WNVTDT7.

III. CONCLUSION

35. For all of these reasons, I conclude that (a) channel positioning is an important factor in determining the viewership of a network; (b) neighborhooding is a critical element of channel positioning; (c) there is no exact number of channels that constitute a neighborhood but a neighborhood can consist of as few as three channels; (d) neighbhorhooding practices may vary in quality between MVPDs; and (e) news neighborhoods generally consist of channels like CNN, CNBC, and MSNBC but generally need not include HD, sports, foreign-language, PEG, weather, or broadcast multicast services. Finally, in my opinion, the 368 groupings of at least four news channels in a block of five identified by Bloomberg in Exhibit H of its Complaint constitute neighborhoods of news channels.

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

Dated: August 30, 2011

David R. Goodfriend

APPENDIX A

David Raphael Goodfriend
1300 19th St. N.W.
5th Floor
Washington, D.C. 20036

President, Goodfriend Government Affairs (2009-present)
Represent and counsel a wide range of organizations in the telecommunications and renewable energy sectors before the U.S. Congress; Federal Communications Commission; White House; U.S. Depts. of Justice, Commerce, Agriculture, and other federal and state government organizations. Clients have included Fortune 500 companies such as DISH Network and Lennar; technology and media start-up firms such as WildBlue satellite broadband and nuvoTV network; investment fund Council Tree; and public interest group Sports Fans Coalition.

Vice President, Law and Public Policy, DISH Network (2006-09)
Managed the state and federal legislative and political agenda for DISH Network, the third-largest pay-TV provider in the U.S. Developed policy proposals and advocated on behalf of the company before federal and state governments. Coordinated with business units including programming, corporate development, and technology to promote pro-competition public policy in telecommunications.

Director of Programming, Director of Business Development, DISH Network (2004-06)
Reviewed potential programming services seeking carriage on DISH Network; negotiated affiliation and other content-licensing agreements between content providers and DISH Network, including linear, pay-per-view, on-demand, and online content delivery, with a particular emphasis on independent, niche programming services. Worked with technology and business development teams on broadband delivery options for DISH Network, including hybrid satellite/terrestrial wireless broadband platforms; satellite broadband; DSL partnerships; and other two-way high speed platforms.

Co-Founder, Executive Vice President and General Counsel, Air America Radio (2003-04)
Co-founded and served on initial executive team of the first commercial "Progressive Talk" radio network in the U.S., which broke all audience share records for any new radio network launch since the 1940s. Negotiated all affiliation/syndication agreements between Air America Radio and distributors, including major radio station ownership groups and satellite radio providers. Negotiated all talent contracts. Managed successful transfer to new management team after initial launch.

Director of Legal and Business Affairs, DISH Network (2001-03)
Managed all federal regulatory affairs for DISH Network, including representation before the Federal Communications Commission; managing regulatory outside counsel; drafting pleadings; internal compliance; and policy development. Led the regulatory team during the proposed merger between DISH Network (EchoStar) and DIRECTV (Hughes).

Media Legal Advisor, Commissioner Ness, Federal Communications Commission (1999-2001)
Advised majority Commissioner on all matters in the broadcast, cable, Direct Broadcast Satellite, and related issue areas, including the broadcast digital transition; cable horizontal ownership caps; implementation of the Satellite Home Viewer Improvement Act of 1999; and the AOL/Time Warner, CBS/Viacom, AMFM/Clearchannel, AT&T/TCI, and other mergers.

Deputy Staff Secretary, The White House (1998-99)
One of three individuals responsible for reviewing, summarizing, and regulating all documents read or signed by the President, including bills, executive orders, staff memoranda, diplomatic cables, and national security documents. Helped manage a staff of roughly 100 individuals in the correspondence, clerks, and related offices. Served as traveling staff secretary to President Clinton on presidential visits to Europe and Central America.

Professional Staff, U.S. Senate Governmental Affairs Committee (Sen. Herb Kohl, Chairman) and U.S. House Select Committee on Narcotics Abuse and Control (Rep. Charles B. Rangel, Chairman) (1990-1993); **Military Legislative Assistant, House Armed Services Committee** (1993-95)

Associate, Law Clerk, Willkie Farr & Gallagher (1995-98)

EDUCATION
Juris Doctor, *cum laude,* Georgetown University Law Center (1997)
Bachelor of Arts, *summa cum laude*, Beloit College (1990)
Chicago Business Fellow, University of Chicago Graduate School of Business (1989)

EXHIBIT D

FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Complaint of	)	
	)	
BLOOMBERG L.P.	)	MB Docket No. 11-104
	)	
v.	)	
	)	
COMCAST CABLE COMMUNICATIONS, LLC	)	
	)	
	)	
	)	

DECLARATION OF DOUGLAS FERGUSON

I, Douglas Ferguson, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Douglas Ferguson. My business address is College of Charleston, Department of Communication, 9 College Way, Charleston, SC 29424. I am currently a professor in the Department of Communication at the College of Charleston.

2. As I explain below, I have spent thirty-five years working in the field of media, and in particular working on issues involving cable television, broadcasting, and web content. Cable television is my earliest academic interest and I have closely followed the industry since the late 1960s. Although my actual employment in the cable industry was brief, it has always been a field of great interest to me and is a principal focus of my academic studies.

3. I have authored publications on topics including television viewing motivations, broadcast programming strategies, and media economics. My work has attracted several

collaborators, but some of my work is single-authored. My research and other writing have been cited by other scholars more than 37 times per year, on average, for the past 22 years. The book that Dr. Susan Eastman and I wrote on programming strategies, *Media Programming*, now going into its 9th edition, is my most widely known work among scholars who study television.

4. My cable experience began with a master's thesis completed in 1973, in which I studied the local origination efforts of the first major-market CATV failure, which took place in 1967 just outside of Cleveland. Later in 1973, I went to work for Gerity Cablevision in Bay City, MI, a cable system that operated a 24-hour, 7-day local channel for which I was in charge of local and syndicated programming. The system was limited by the FCC's Second Report and Order to the importation of only two distant signals, back in the days before satellites delivered signals to cable operators and before there were any real cable channels. Part of my duties involved programming equipment at the headend to switch certain distant signals on or off to avoid network duplication.

5. In 1974, I returned to my hometown (Lima, Ohio) to work in local broadcast television for the NBC affiliate, where I gradually progressed from film editor to station manager. During those years, I maintained close and frequent contact with surrounding cable systems. The city of license had very heavy cable penetration owing to its single-station status surrounded by four competitive television markets (Toledo, Dayton, Columbus, Ft. Wayne). In 1987, my doctoral studies began and in 1990, I received my Ph.D., which was based on a dissertation that focused on the influence of cable television as a major variable in audience behavior. Since then I have co-authored three books on television, written 20 journal articles and presented 40 papers at conferences. My work has addressed both cable and broadcast issues related to television.

6. I was recently asked by Bloomberg L.P. ("Bloomberg") to provide an opinion on its dispute with Comcast over news neighborhoods.

7. I have reviewed Bloomberg's confidential complaint to the FCC, Comcast's Answer to the Complaint, and three confidential declarations (Mr. Egan, Mr. Kreiling, and Dr. Israel).

8. In what follows, I explain my opinion that groupings with as few as four news channels in a block of five consecutive channel positions on many Comcast channel lineups constitute "news neighborhoods."

9. Neighborhooding is not a new practice, although the term is new to me since I identified the same practice as "clustering." In the first (1981) edition of the Eastman book *Broadcast Programming*, cable system strategies were barely mentioned – just two pages in the overview introductory chapter – where cable operators were described as acting "merely as relayers of programming." In the second (1985) edition of the book entitled *Broadcast/Cable Programming*, however, Dr. Eastman added three new chapters on cable, thanks in part to the "more than 50" cable networks that arose in the intervening years between editions. In a section of the chapter titled "Cable System Programming," the book includes a section labeled "Dial Placement" in which Dr. Eastman introduces the term "content clustering" to describe the clustering of different genres of cable programming that would be "easy to promote" for the cable operator and "easy to remember" for the subscriber (p. 231). In the third (1989) edition, Dr. Eastman revised the term to "clustering by content" with a more specific example: "placing news and information services" into clusters that "make immediate sense to subscribers" (p. 276).

10. Thus, neighborhooding is a standard way that cable lineups have evolved from the days of relatively few channels to the digital cornucopia of today. Just as groceries arrange their aisles and shelves by the type of food or merchandise, cable systems present their products in familiar patterns of shelf space. In fact, shelf space is a long-time metaphor in programming textbooks like the one Dr. Eastman and I have written.

11. Competing textbooks targeting programming strategies also describe this clustering practice, labeled neighborhooding by the FCC: Perebinossoff, Gross & Gross published the second edition (2005) of their book *Programming for TV, Radio and the Internet* in which they state: "Cable systems frequently make changes in their channel lineup. Often, however, the only thing that is changed is the channel number. MTV may be switched from channel 12 to channel 26. The reasons for this are many. Sometimes the system rebuilds to add channels and is then able to add more services. But rather than lumping all the new ones at the end, the system may want to give some rhyme or reason to channel numbers. For example, it may want to group all music services . . ." (pp. 280-281). The authors conclude: "Systems are often wary of communicating exact details if the change involves eliminating some service. There are always people who will kick and fuss when something is taken away. What cable systems often do is send subscribers an innocent-looking channel card with their monthly bill. This lists the new lineup without indicating what has been eliminated." (p. 281). From this, I conclude that other experts agree with me, that clustering channels is commonplace and that no one specifies a percentage or number of channels that "must" appear in a grouping to qualify it as a neighborhood. Furthermore, the view of other experts demonstrates that cable systems can change their lineups with relative ease.

12. Channel changing, once known as channel surfing until the web popularized that verb metaphor, and now better known as flipping or grazing, has been the subject of many empirical studies. The book *Cableviewing* (1989) by Carrie Heeter and Bradley S. Greenberg summarizes many baseline studies in audience behavior with regard to cable channels. Citing a study by psychologists Shiffrin and Schneider in 1977, Heeter labels different strategies for searching channels (pp. 14-15). Specifically, elaborated search is contrasted with a terminating search. In the first case, viewers must search hundreds of channels to exhaust the possibility that a better choice could be made. In the second case, viewers look until they are satisfied with a channel and then stop

looking. I conclude that news neighborhoods encourage viewers to shorten a tedious search by settling for the comfort of a familiar set of channels in a well-tended neighborhood of popular choices. It is my view that many viewers welcome news neighborhoods to assist them with their search strategy.

13. Also in *Cableviewing*, Greenberg reinforced the notion that viewers are creatures of habit (p. 98). His research is consistent with my own observation that most people want a relaxing time with television, not a memory test with too much to recall.

14. Heeter notes from her research that only 23 percent of subscribers can identify the channel number of more than half of all available channels (p. 22). Yet her findings were published when there were only 36 channels instead of hundreds. Surely viewers are even more pleased when their channel options are arranged in convenient clusters of genres. Heeter also identifies "viewer awareness [of channel choices]" as an important element of program choice, which gives me reason to conclude that channels excluded from news neighborhoods are at a disadvantage to included channels.

15. With regard to grazing, if a channel-up strategy used by many viewers leads them to graze through three consecutive religious channels, followed by three pop music video channels, the viewers will readily assume that there will be no more religious channels to follow. If the next sequence of channels is four or five news channels, followed by Disney and Nickelodeon, then the same viewers cannot be blamed for thinking they are done with the news channels. I conclude from this that channels excluded from news neighborhoods are disadvantaged by the way viewers are conditioned by neighborhoods that already exist "now."

16. I believe that Bloomberg's definition of a news neighborhood meets a common-sense standard, where the most popular channels are grouped together on the channels with the

lower numbers of the channel lineup, generally channels under 70. The FCC's definition incorporates the same common sense of neighborhoods. Viewers expect news channels to be reasonably adjacent, just as they expect over-the-air signals to be among the first 13 numbers on the channel lineup. [Numerous other neighborhoods exist: shopping, digital music, children's, lifestyle, movies, pay channels.] Digital channels have not changed the audience's expectations. The existence of more niche channels above channel 70 only reinforces the notion that lower numbered channel positions constitute the most worthy standard-definition signals. If neighborhoods made no difference, then cable systems would just mix digital audio channels in with the video channels, instead of separating them above Channel 900.

17. No one in the MVPD industry would be shocked to visit friends in another city where similar-genre channels were grouped along the channel lineup. Neighborhoods vary, but they are instantly recognizable. Akin to Potter Stewart, I know a news neighborhood when I see one. Neighborhoods may not be universal, but they are quite common.

18. I believe four channels is clearly sufficient to constitute a news neighborhood and that exiling a later entrant like Fox Business or Bloomberg TV ("BTV") to a channel position outside of the news neighborhoods identified by Bloomberg in its Complaint is an onerous barrier to entry into the marketplace. As a result, the neighborhoods identified by Bloomberg meet the definition adopted by the FCC, i.e., "placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup."[1]

19. In contrast, I do not agree with Comcast that a neighborhood generally includes 10 or more channels. That a particular genre might have more than 10 choices does not alter the

[1] *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, 4358 (App. A, Sec. III 2) (2011).

dominance of the top three or four or five news channels, depending on the competitive prowess of the contenders. For example, Current TV is not in the same league as MSNBC or CNN, as Keith Olbermann has discovered, and his show is on a channel with essentially no other news or information programming. Likewise, I disagree with Comcast's assertion that a customer would need to be convinced that no other news channels exist before determining if a channel grouping is a neighborhood. The significance is not influenced by a lower number if that same lower number represents the most important news channels. Whether the channels became popular because of their positioning or the positioning determined their popularity is a chicken-and-egg question, but the fact remains that the most popular four channels easily constitute a dominant news neighborhood, regardless of the number of other channels of the same genre that one could conjure. Audiences simply do not put that much thought into channel selection when the low-hanging fruit are so accessible on the same adjacent branches.

20. Brand, popularity, or financial success of a channel or channels are all impacted by channel placement and the effectiveness of a neighborhood, For example, on August 25, 2011, Fox News Channel had more total viewers than CNN, MSNBC and CNBC *combined*, yet Fox Business News ("FBN") had only a little over 30 percent of CNBC's audience. News Corporation produces both FNC and FBN, but FNC is typically included in news neighborhooding while FBN (alongside BTV) typically lives in isolation from neighborhoods on a preponderance of MVPDs.

21. Customers for cable TV expect the best channels grouped together, just as they expect Campbell's Soup to be at eye level in the grocery, not down at their ankles. Even when the channels are renumbered from time to time, the relative groupings remain. Based entirely on my 40-plus years of media experience, audiences are creatures of habit. Media consumption is a leisure activity, not bicycle assembly. Viewers resist hard work and prefer being able to find the good stuff

quickly. As a result, it is my opinion that the grouping of four or five channels of the same genre together in a channel lineup is not only a neighborhood but such an effective cluster that it makes it less likely that customers will look for other similar genre programming because products, as in the example above of FBN, require ready access. If viewers want news and also want to check the stock market channel for financial news, and if they need only press the channel-up button two or three times to find CNBC, then they will be far less likely to even remember BTV or FBN, let alone try to remember the 3-digit combination that takes them there. Cable subscribers may have to adjust to channel realignments, because cable systems do them all the time for often unclear reasons, but they cannot adjust their expectations of convenience once they have reoriented their search. This is nothing new. Carrie Heeter described the model in 1985 in a landmark study on how viewers search for channels. ["Program Selection with Abundance of Choice," *Human Communication Research*, Volume 12, Issue 1, pages 126–152, September 1985].

22. The research is clear that viewers orient themselves to programs through a particular search strategy. Most use an elaborated search, in which they start with familiar or low-numbered channels and run through the lineup until they come to the nearest option that fulfills their search. In the Heeter article mentioned above, she warned against assuming that viewers are perfectly aware of program alternatives (and attributed this situation as being more acute for newer media like cable television). Heeter limited the model to situations involving choice, i.e., where viewers did not turn to television to watch a specific, preselected program. A door-to-door survey of 232 cable households was completed, yielding interviews that averaged 25 minutes. The questionnaire included items on several process variables. The process variables of orienting search (becoming aware of the alternatives to watch) and reevaluation (reconsidering a choice) were found to be positively correlated with channel familiarity and channel repertoire (use of cable channels). Heeter also found gender differences: "Males and females approach program selection quite differently,

with females checking a guide more, and males changing channels (at all times) more, being familiar with and watching more channels, and engaging in less concentrated channel use." (p. 150).

23. I have been asked to opine on whether the presence of more than one grouping of news channels is consistent with the concept of neighborhooding, and I believe it is. If MVPDs create secondary groupings of newer news channels with tiny viewership, it only reveals the inequity of the positioning of the secondary channels themselves. It is similar to the neighborhood we all hope to live in, versus the less desirable one. One is a preferred neighborhood, where viewers are likely to spend quality time (rather than rarely visit).

24. What is the impact of a channel assigned only a channel position above 100? Cable customers know there are channels numbered above 100. With the exception of premium channels and HD channels, however, viewers associate higher-numbered channels with "boutique" programming that appeals to specialized audiences.

25. For all of these reasons, I conclude that Bloomberg's definition of news neighborhood is accurate. I also conclude that Comcast could readily accommodate BTV's request for neighborhood positioning. The claims of disruption are greatly exaggerated in my informed opinion.

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

Dated: August 29, 2011

Douglas Ferguson

CURRICULUM VITAE

DOUGLAS A. FERGUSON, Ph.D.

Academic Degrees

Doctor of Philosophy in Mass Communication, School of Mass Communication, Bowling Green State University, Bowling Green, Ohio. Dissertation: "Selective Exposure to Television: Predicting Inheritance Effects From VCR and Cable Penetration" (University Microfilms Inc. #DA9034131)
(1987-1990)

Bachelor of Arts (*summa cum laude*) and Master of Arts, both in Speech Communications at The Ohio State University. Thesis: "The First Major Market Cable Television Failure: A Case Study of the 1967 CATV Efforts in Lakewood, Ohio"
(1969-1973)

Academic Positions

Teaching Positions

Professor, Department of Communication, College of Charleston,
Charleston, South Carolina.
(1999-)

Associate Professor, Department of Telecommunications, Bowling Green State University (BGSU), Bowling Green, Ohio.
(1995-1999)

Assistant Professor, Department of Telecommunications, BGSU.
(1990-1995)

Instructor, Department of Radio-Television-Film, BGSU.
(1989-1990)

Teaching Fellow, School of Mass Communication, BGSU.
(1987-1989)

Lecturer, Rhodes State College, Lima, Ohio.
(1985-1987)

Administrative Positions

Director of Graduate Studies, Master of Arts in Communication, Department of Communication, College of Charleston.
(2004-2008)

Editor, *Journal of Radio & Audio Media* (formerly *Journal of Radio Studies*), Broadcast Education Association.
(2005-2008)

Chair, Department of Communication, College of Charleston.
(1999-2004)

Chair, Department of Telecommunications, Bowling Green State University.
(1997-1999)

General Manager, WBGU-FM, Bowling Green State University.
(1997-1999)

Assistant Dean for Resources and Planning, College of Arts and Sciences, BGSU.
(1994-1997)

Non-academic Positions

Station Manager, WLIO(TV) [NBC], Lima, Ohio.
(1980-1987)

Program Director and Assistant to the General Manager, WLIO(TV).
(1976-1980)

Promotion Director, WLIO(TV).
(1975-1976)

Director and Film Editor, WLIO(TV).
(1974-1975)

Program Director, Gerity Cablevision, Bay City, Michigan.
(1973-1974)

Salesperson/Radio Announcer, KESM-AM, El Dorado Springs, Missouri.
(1973)

Radio Announcer, WIMA-AM, Lima, Ohio.
(1969-1971)

Sportswriter, *The Lima News*, Lima, Ohio.
(1969)

Publications

Books

Eastman, S. T., & Ferguson, D. A. (2009) [published January 2008]. *Media Programming: Strategies and Practices* (8th Ed.). Boston: Thomson Wadsworth. Also editor/contributor on the 7th edition (2006) and on the 6th edition (2002) and 5th edition (1997) under the title *Broadcast/Cable/Web Programming: Strategies and Practices*. Newest edition includes the following authored chapters:

Ferguson, D. A., & Eastman, S. T. (2009). A framework for programming strategies (pp. 1-38).

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Ferguson, D. A., Eastman, S. T., and Klein, R. A. (2006). Promoting the media: Scope and goals (pp. 1-29).

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Ferguson, D. A. (1998). The economics of broadcast television (pp. 42-63).

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Journal Articles (* = blind refereed)

*Ferguson, D. A., & Greer, C. F. (2011). Local radio and microblogging: How radio stations in the U.S. are using Twitter. *Journal of Radio and Audio Media,18*(1), 33-46.

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*Greer, C. F., & Ferguson, D. A. (2011, forthcoming). Following local television news personalities on Twitter: A uses and gratifications approach to social networking. *Electronic News, 5*(3).

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^Ferguson, D. A. (2003). Remembering a mentor: Joe Foley. In M. D. Murray and R. L. Moore (Eds.), *Mass Communication Education* (pp. 295-296). Ames, IA:Iowa State Press.

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*Greer, C. F., & Ferguson, D. A. (2011, April). Following local television news personalities on Twitter: A uses and gratification approach to social networking. First-place (open competition) paper presented at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

Ferguson, D. A. (2011, March). Technology and social interaction: The growing role of social media in interpersonal communication. Roundtable discussion at the annual meeting of the Southern States Communication Association (SSCA), Little Rock.

*Ferguson, D. A., & Greer, C. F. (2010, April). Local radio and online audience connectivity: How stations in the U.S. are using Twitter. Paper presented at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

*Greer, C. F., & Ferguson, D. A. (2010, April). Using Twitter for promotion and branding: A content analysis of local television Twitter sites. First-place (open competition) paper presented at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

*Greer, C. F., & Ferguson, D. A. (2009, November). Radio audience attitudes toward programming and localism in the decade following the 1996 Telecommunications Act. Competitive paper presented to the Mass Communication Division of the annual meeting of the National Communication Association (NCA), Chicago.

*Greer, C. F., & Ferguson, D. A. (2008, April). Factors influencing the adoption of HD Radio by local radio station managers. First-place (open competition) paper presented at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

Ferguson, D. A. (2008, April). Social media: The engaged audience. Invited panel paper presented at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

*Capps, W. E., & Ferguson, D. A. (2008, April). Cultivation effects of political television advertising in influencing and persuading voters. Paper presented to the annual meeting of the Southern States Communication Association (SSCA), Savannah.

Ferguson, D. A. (2007, October). The online editor: Teaching writing with Google. Invited paper presented to the Convergence and Society: Media Ownership, Control and Consolidation conference, Columbia, SC.

*Ferguson, D. A., Greer, C. F., & Reardon, M. R. (2007, April). Uses and gratifications of MP3 players by college students: Are iPods more popular than radio? First-place (open competition) paper presented at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

Ferguson, D. A. (2007, April). Social networking and the active audience. Invited paper presented at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

Ferguson, D. A. (2007, April). The journal editorial review process and documentary research treatments. Invited paper presented at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

Ferguson, D. A. (2006, November). The use of poster sessions to present student research in the methods classroom. Paper distributed as part of a panel presentation at the annual meeting of the National Communication Association (NCA), San Antonio. (also available at http://fergusond.people.cofc.edu/posters.pdf)

*Ferguson , D. A. (2005, April). The value of self-selected samples in new media research. Paper presented within a refereed Communication Technology Division panel (Digital Video Recorders at Five Years: Is the Revolution Still Coming?) at the annual meeting of the Broadcast Education Association (BEA),Las Vegas.

*Ferguson , D. A., & Perse, E. M. (2005, April). Length of DVR ownership effects on ad-skipping. Paper presented within a refereed Communication Technology Division panel (Digital Video Recorders at Five Years: Is the Revolution Still Coming?) at the annual meeting of the Broadcast Education Association (BEA),Las Vegas.

*Ferguson, D. A., & Perse, E. M. (2004, August). Ad skipping and satisfaction among TiVo users by length of ownership. Paper presented at the annual meeting of the Association for Education in Journalism and Mass Communication (AEJMC), Toronto.

Ferguson, D. A. (2004, April). Asynchronous viewing options in the year 2005. Paper presented at the annual meeting of the Southern States Communication Association (SSCA), Tampa.

Perse, E. M., & Ferguson , D. A. (2003, April). Audience activity and the study of the newer media. Paper presented for a refereed Research Division panel (Uses and Gratifications in the Newer Electronic Media) at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

Ferguson, D. A. (2002, November). Asynchronous revenue streams in TV's third generation. A panel presentation for The Dynamics of Convergent Media conference at the University of South Carolina, Columbia.

*Ferguson, D. A., & Benigni, V. L. (2002, November). Relationship strategies in a large Department of Communication. Top-3 competitive paper presented to the Association for Communication Administration (ACA) Division at the annual meeting of the National Communication Association (NCA), New Orleans.

*Ferguson, D. A. (2002, April). A conceptual inventory of three generations of television. Second-place open-entry paper ($100 cash award) for the Management & Sales division of the Broadcast Education Association (BEA), Las Vegas.

Ferguson, D. A., & Perse, E. M., (2002, April). Audience satisfaction among TiVo users: A comparison of two national samples. Paper for a refereed Management and Sales Division panel (The Impact of TiVo and Other PVRs on the Television Broadcasting Industry) moderated by the lead-author at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

Ferguson, D. A., & Perse, E. M., (2001, November). An exploration of audience behavior with digital video recorders (DVRs). Paper for a refereed Mass Communication Division panel (The "New" Television Viewer: Research on the Influence of New Communication Technologies) chaired by the lead-author at the annual meeting of the National Communication Association (NCA), Atlanta.

*Ferguson, D. A., & Perse, E. M., (2001, August). Enhanced television viewing with digital video recorders (DVRs): Audience satisfaction in an asynchronous television environment. Paper presented at the annual meeting of the Association for Education in Journalism and Mass Communication (AEJMC), Washington,DC.

*Ferguson, D. A. (2001, April). Online programming. Competitive paper presented to the annual meeting of the Southern States Communication Association,Lexington.

*Perse, E. M., & Ferguson, D. A. (2000, November). Web surfing satisfaction. Top-3 competitive paper presented to the Mass Communication Division of the annual meeting of the National Communication Association (NCA), Seattle.

*Ferguson, D. A. (2000, March). Program promotion on the internet. Competitive paper presented to the annual meeting of the Southern States Communication Association, New Orleans.

*Ferguson, D. A., & Perse, E. M. (1998, November). The World Wide Web as a functional alternative to television. Competitive paper presented to the Mass Communication Division of the annual meeting of the National Communication Association (NCA), New York.

Ferguson, D. A., and Klopfenstein, B. C. (1998, August). How media managers deal with change: The case of HDTV. Panel of the Media Management & Economics division at the annual meeting of the Association for Education in Journalism and Mass Communication (AEJMC), Baltimore.

*Ferguson, D. A., & Greer, C. (1998, April). Inheritance effects in launching new sitcoms. Competitive paper presented to the Management & Sales Division of the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

*Walker, J. R., and Ferguson, D. A. (1997, July). Changing demographics of mass media industries in the U.S.: The broadcast television industry. Joint refereed panel of the Media Management & Economics and Advertising divisions at the annual meeting of the Association for Education in Journalism and Mass Communication (AEJMC), Chicago.

Ferguson, D. A. (1997, April). Broadcast television in a multi-channel world. A panel presentation at the Central States Communication Association annual meeting, St. Louis.

Ferguson, D. A. (1996, May). The World Wide Web from a text author's perspective. Paper presented as part of a Communication & Technology Division panel at the annual meeting of the International Communication Association (ICA), Chicago.

*Perse, E. M., Nathanson, A. I., & Ferguson, D. A. (1995, November). Gender differences in television use: An exploration of the instrumental-expressive dichotomy. Paper presented as part of a refereed panel at the SCA Convention, San Antonio.

*Ferguson, D. A., & Melkote, S. R. (1995, November). The public opinion implications of leisure time and channel repertoire in a multichannel environment.Paper presented at the annual meeting of Midwest Association for Public Opinion Research, Chicago.

*Ferguson, D. A., & Perse, E. M. (1994, March). Viewing television without a remote: A deprivation study. Competitive paper presented to the Research Division of the annual meeting

of the Broadcast Education Association (BEA), Las Vegas.

*Perse, E. M. & Ferguson, D. A. (1992, November). Gratifications and the newer media technologies. Competitive paper presented to the Mass Communication Division of the annual meeting of the Speech Communication Association (SCA), Chicago.

*Perse, E. M., Ferguson, D. A., and McLeod, D. M. (1992, August). Cultivation and the newer media technologies. Top competitive paper out of 24 accepted Communication Theory and Methodology Division papers presented at the annual meeting of the Association for Education in Journalism and Mass Communication (AEJMC), Montreal.

*Ferguson, D. A. (1992, April). Measurement of mundane TV behaviors: Remote control device flipping frequency. Paper presented as part of a refereed panel on "Refining our Measurement of Important Media Variables" for the Research Division of the BEA Convention, Las Vegas.

*Ferguson, D. A., & Perse, E. M. (1992, April). Media structure and audience influences on channel repertoire. Top open-entry paper in the Research Division at the annual meeting of the Broadcast Education Association (BEA), Las Vegas.

*Ferguson, D. A. (1991, November). The history of motion picture colorization. Paper presented as part of a refereed panel at the SCA Convention, Atlanta.

*Ferguson, D. A. (1991, November). Gender differences in the use of remote control devices. Competitive paper presented at the SCA Convention, Atlanta.

*Ferguson, D. A. (1991, May). Channel repertoire in the new media environment. Competitive paper presented at the annual meeting of the International Communication Association (ICA), Chicago.

*Ferguson, D. A. (1991, May). The economics of Caller ID. Paper presented as part of refereed panel (ranked 2nd of 53 panel proposals in the Communication & Technology Division) at the ICA Convention, Chicago.

*Ferguson, D. A. (1991, April). Focus group research as a tool for theory development. Paper presented as part of a refereed panel on "NonquantitativeApproaches to Media Research" for the Research Division of the BEA Convention, Las Vegas.

*Ferguson, D. A. (1991, April). The domain of inquiry for media management researchers. Top debut paper ($200 cash award) in the Management & Sales Division of the BEA Convention, Las Vegas.

*Klopfenstein, B. C., & Ferguson, D. A. (1991, April). VCR survey meta-research: An application of the prepositional inventory. Top open-entry paper in the Research Division of the BEA Convention, Las Vegas.

*Klopfenstein, B. C., & Ferguson, D. A. (1990, November). Setting the VCR research agenda

for the 1990s: A meta-analysis of the first decade of VCR research. Paper presented as part of a refereed panel at the SCA Convention, Chicago.

*Ferguson, D. A. (1990, November). Selective exposure to television: An exploratory study of VCR usage. Paper presented as part of a refereed panel at the SCA Convention, Chicago.

*Ferguson, D. A. (1990, November). Selective exposure to television: Predicting inheritance effects from VCR and cable penetration. Top 5 paper out of 84 competitive Mass Communication Division papers presented at the Speech Communication Association (SCA) Convention, Chicago.

*Klopfenstein, B. C., & Ferguson, D. A. (1990, September). Conducting telephone survey research for student-operated campus radio stations. Competitive paper presented at the Broadcast Education Association (BEA) Radio Only Conference, Boston.

*Klopfenstein, B. C., Spears, S. C., & Ferguson, D. A. (1990, August). VCR attitudes and behaviors by length of VCR presence. Competitive paper presented at the AEJMC Convention, Minneapolis.

*Smith, K. A., & Ferguson, D. A. (1990, August). The portrayal and influence of the personal and professional behavior of prime-time television characters. Competitive paper presented at the AEJMC Convention, Minneapolis.

Smith, K. A., & Ferguson, D. A. (1989, April). Political independents and media use. Paper presented at a regional meeting of the Communication Theory and Methodology Division of the AEJMC, Columbus, OH.

*Smith, K. A., & Ferguson, D. A. (1988, November). Family socialization and public affairs media predictors of partisan orientations. Competitive paper presented at the Midwest Association of Public Opinion Research, Chicago.

Consulting

Gerson Lehrman Group, Member, Tech, Media & Telecom Council.

TV Asahi America (Japanese group owner), report on the future of commercial television in the United States, July 2000.

Globosat satellite network, May 2000, Rio de Janeiro, Brazil. Conducted week-long seminar.

Arab Radio-Television satellite network, August 1999, Avezzano, Italy. Conducted week-long seminar.

Grants

International Radio-Television Society (IRTS) Faculty/Industry Seminar, New York City, (funded by IRTS grant): 2005, 2003, 2000, 1997, 1995, 1991.

NATPE (National Association of Television Program Executives) Conference and Exhibition, New Orleans, January 25-28, 1999 (funded by a $2000+ NATPE Educational Foundation grant and a travel grant from BGSU).

National Engineering Consortium University Faculty Grant ($995) to attend the 1992 National Communications Forum, Chicago, October 1992.

Faculty Research Committee Basic Grant ($3000) from BGSU to study inheritance effects in the new media environment, Summer 1992.

Faculty Development Grant ($1070) from BGSU to attend the NAB Management Development Seminar for Television Executives, July 19-25, 1992, NorthwesternUniversity.

One of five recipients of two grants from the Office of Consumers' Counsel (State of Ohio) for $21,553 to study arguments in favor of mandatory "caller-ID" blocking from Ohio Bell, June 1990.

Recipient of one of the two 1989 Dowden Center Doctoral Dissertation Grants ($1000) from the University of Georgia. Presented on May 2, 1990, in a ceremony in Athens, GA.

Selected Honors

Stephen H. Coltrin Award for Excellence in Electronic Media Education, International Radio and Television Society (IRTS) Faculty/Industry Seminar, first-place team award, 1992, 1997, 2003.

Outstanding Ph.D. Student (1988-89) and (1989-90), School of Mass Communication, Bowling Green State University. Chosen from different fields of fifteen doctoral candidates.

Phi Beta Kappa. Ohio State University, 1973.

Teaching

College of Charleston

Introduction to communication
Mass media
Media marketing

Communication research methods
Media history
Communication management

Bowling Green State University

Introduction to mass media
Introduction to film
Radio announcing and production
Introduction to television production
Film production
Applied research in telecommunication
Intermediate television production
Media effects
Advanced radio production
Electronic media management
Television programming
Economics, sales and promotion
Political communication
Sports broadcasting
Broadcast station management
Political communication
Proseminar in mass communication
Analyzing research data with SPSS
Seminar in media management

Rhodes State College

Introduction to robotics
Programmable logic controllers
Electronic interface systems
Digital equipment fundamentals

Thesis and Dissertation Students

M.A. Thesis Committees

Elizabeth Dorrance (member), 2011, "The Language of Clothes: Nonverbal Communication Intention and Misinterpretation"

Mia Fischer (member), 2010, "'Birds of a Feather Flock Together' Reloaded: Homophily in the Context of Web 2.0 in Online Social Networking Sites, Such as Facebook"

Ronald Schlegel (member), 1997, "The Diffusion and Adoption of Microcomputer Platforms in U.S. Organizations: The Establishment of the Microsoft Windows PC as the De

Facto Microcomputing Standard"

Krishna Kandath (member), 1997, "Agenda-Setting Effects of English Press in India: A Case Study in Hyderabad"

Leigh Hallisey (member), 1997, "Decades of Decadence: Aaron Spelling as Television Auteur"

Elizabeth Rogers (member), 1993, "Resisting Patriarchy: The Femme Fatale Image in Four Films Noirs"

Charles Earl (advisor), 1992, "Sources of District Awareness Among Voters"

Michelle Ruggles (advisor), 1992, "The Public Broadcasting Service and Its New Strategy Directions for the Nineties"

Darrin Sutherland (member), 1992, "A Study of the 1990 British Television Broadcasting Bill"

Andrew Daniel (member), 1991, "Telephone Company/Cable Television Cross-ownership: A Critical Examination"

Ph.D. Dissertation Committees

Randyll Yoder (advisor), 1997, "Public Access Producers: The Roles of Genre, Motivation, and Audience in Program Design"

William Covington, Jr. (advisor), 1994, "Systems Theory Applied to the Management of Television Stations in the Midst of a Multichannel Marketplace" (published as Systems Theory Applied to Television Station Management in the Competitive Marketplace by University Press of America, 1997)

Carol Schlagheck (member), 1997, "Newspaper Readership Choices Among Young Adults"

Edward J. Carlin, II (member), 1996, "An Analysis of the Variables Influencing the Potential Adoption of a New Communication Innovation: The Case of the Digital Satellite System"

Stuart Esrock (member), 1995, "Consumer Predispositions Toward the National Information Infrastructure: An Exploratory Study in Perceptions and the Potential Diffusion of the Information Superhighway"

Edward Brewer (member), 1995, "Turning up the Heat: A Study of the Rhetorical Patterns of the American Family Association"

Jeffrey Harman (member), 1995, "Digital Radio Broadcasting Technology Applications: A Delphi Forecast Study"

Sandhya Rao (member), 1992, "Role of Users' Attitudes and Perceptions in the Implementation

of NICNET in Karnataka State, India"

Service

Department

Chair, Curriculum and Enrollment Management Committee, Department of Communication, College of Charleston, 2010-2011.

Member, Curriculum and Enrollment Management Committee, Department of Communication, College of Charleston, 2009-2010.

Chair, Executive Committee, Department of Communication, College of Charleston, 2005-2008.

Graduate Program Director, Department of Communication, College of Charleston, 2004-2008.

Chair, Department of Communication, College of Charleston, 1999-2004.

Chair, Department of Telecommunications, BGSU, 1997-1999.

Acting Director, School of Communication Studies, June 16-20, 1997.

Member, Director's Advisory Committee, School of Communication Studies, 1996-1998.

Member, Assessment Committee, Department of Telecommunication, 1996-1997

Co-presenter, World Wide Web Workshop for Broadcasters, December 8, 1995, and February 9, 1996, day-long sessions held at BGSU for Ohio radio and TV broadcasters.

Member, Chair Evaluation Committee, Department of Telecommunications, Spring 1995.

Acting Chair, Department of Telecommunications, Spring 1994 and Summer 1996.

Acting Graduate Coordinator, School of Mass Communication, BGSU, Spring 1993.

Member, Charter Committee, School of Mass Communication, BGSU, 1993.

Founding co-advisor, BG 24 News, School of Mass Communication, 1992-1993.

Coordinator. School of Mass Communication Computer Network, BGSU, 1992-1995.

Director, Radio-Television Summer Workshop, June 1992 and 1993. Planned week-long

workshop for high school students at BGSU.

Chair, Undergraduate Program Committee, School of Mass Communication, 1992-94.

Chair, TV Faculty Search Committee, Department of Telecommunications, Summer 1993.

Member, Undergraduate Program Committee, School of Mass Communication, 1991-1992.

Member, Undergraduate Appeals Committee, Department of Telecommunications, 1991-1994.

Assistant Director, Radio-Television-Film Summer Workshop, June 1988 - June 1991.

College

Member, Faculty Grievance [Standing] Committee, College of Charleston, 2010-2011.

Member, Faculty Compensation [Standing] Committee, College of Charleston, 2009-2010.

Member, Faculty Senate, College of Charleston, 2002-2004.

Member, Executive Committee, School of Humanities and Social Sciences, College of Charleston, 2009- .

Assistant Dean for Resources and Planning, College of Arts and Sciences, BGSU, 1994-1997.

Participant, "Higher Education Access and Retention: Going Beyond Affirmative Action," joint session among BGSU, Medical College of Ohio, University of Toledo, and Owens Community College, March 28, 1996.

Member, Graduate Council, BGSU, 1996-1997, representing the Dean.

Moderator, "Technology in Higher Education," Ohio Conference of Dean of Colleges of Arts and Sciences, April 1995.

Member, Arts & Sciences Committee, College of Arts & Sciences, BGSU, 1992-1997.

Member, Subcommittee to Study the Role of Part-time Faculty, 1996.

Member, Dean Search Committee, College of Arts & Sciences, BGSU, 1992-1993.

Member, Social Science Committee, College of Arts & Sciences, BGSU, 1992-1993. (Secretary, 1993-1994)

Member, Film Studies Program Committee, College of Arts & Sciences, BGSU, 1992-1994.

University

Member, Faculty Grievance [Standing] Committee, College of Charleston, 2010-2011.

Member, Faculty Compensation [Standing] Committee, College of Charleston, 2009-2010.

Member, Faculty Senate, College of Charleston, 2002-2004.

Member, ADeans Council, BGSU, 1996-1997.

Member, Search Committee for Director of Center for Teaching, Learning and Technology, BGSU, 1995-1996.

Member, Search Committee for Director of Institutional Research, BGSU, 1995-1996.

Chair, Broadcast Advisory Committee, BGSU, 1990-1993.

Graduate Student Orientation Leader, BGSU, 1989.

Professional

Editor, *Journal of Radio and Audio Media*, 2005-2008.

Nominations Committee, Mass Communication Division, National Communication Association, 2003-2004.

Research Committee, National Communication Association, 2002-2003.

Member, Editorial Board, *Journal of Broadcasting & Electronic Media*, 1994-2001; 2005-present.

Member, Editorial Board, *Media Management Review*, 1996-1998.

Newsletter Editor, Mass Communication Division, National Communication Association, 1998

Moderator, "Sitcoms in New Settings" panel, BGSU Conference on the 50 year anniversary of the American Television Situation Comedy, 1947-1997, September 23-27, 1997.

Chair, Management & Sales Division, Broadcast Education Association (BEA), 1995-1997.

Moderator, Competitive Paper Winners panel, BEA, Management & Sales Division, April 1995, in Las Vegas.

Vice-Chair, Management & Sales Division, BEA, 1993-1995.

Secretary-Newsletter Editor, Management & Sales Division, BEA, 1991-1993.

Chair, Nominating Committee, Mass Communication Division, Speech Communication Association, 1992-93.

Moderator, "Maximizing Profits in a 400 Channel World," Broadcast Education Association, Management & Sales Division, April 13, 1992, in Las Vegas.

Manuscript Reviewer

Journal of Broadcasting & Electronic Media, Journal of Communication, Journal of Media Economics, Communication Research, Journal of Advertising, Journalism & Mass Communication Quarterly, Media Management Review, Media Psychology, International Journal on Media Management.

REFERENCES

Dr. Susan Tyler Eastman
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Dr. Alan B. Albarran

Professor and Chair
Department of Radio, Television, and Film
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Denton, TX 75203-0598
(940) 565-2537
albarran@unt.edu

EXHIBIT E

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Complaint of	)	
	)	
BLOOMBERG L.P.	)	MB Docket No. 11-104
	)	
v.	)	
	)	
COMCAST CABLE COMMUNICATIONS, LLC	)	
	)	
	)	
	)	

DECLARATION OF DON MATHISON

I, Don Mathison, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Don Mathison. My business address is 5809 Nicholson Lane, Suite 1610, North Bethesda, MD 20852.

A. Background

2. I have spent 40 years working in the cable and telephone industries, and have developed expertise in the areas of programming, contracts, marketing, digital television, and channel placement.

3. From 2006 to 2011, I served as the Executive Director of Programming for the National Rural Telecommunications Cooperative (NRTC). NRTC is an organization representing the advanced telecommunications and information technology interests of rural telcos and their

affiliates. As part of that function, NRTC provides video offerings to its members, and puts together programming packages that can be customized to fit the needs of particular communities. Video options are critical for rural telcos to remain competitive in the market. In my role as Executive Director of Programming, I personally dealt with all the major programmers. I spent five years obtaining the carriage rights for cable networks and am intimately familiar with the language in all of these agreements as it relates to channel positioning.

4. Prior to that time, from 1983 to 1999, I served as the senior vice president of marketing and programming for Media General Cable before it was acquired by Cox for the highest revenue per subscriber in the industry at the time. In that capacity, I ran the marketing and programming for the Fairfax County cable system, which served more than 260,000 customers in Fairfax County and Fredericksburg, Virginia. My responsibilities included growing the subscriber base; negotiating all the programming contracts; and researching subscriber interest and customer service.

5. From 1970 to 1983 I held various senior level programming positions with the likes of Colony Communications (Providence Journal subsidiary); Warner Communications (Now Time Warner); and Times Mirror Cable (Los Angeles Times subsidiary), where I was Vice President of Marketing and Programming for their 54 Cable systems. I helped launch the first premium pay TV service to rival Showtime and HBO, which eventually was purchased by Showtime. Following that, I became the Regional Director of Marketing and Programming for Westinghouse Broadcasting & Cable serving the Greater Los Angeles area and the southwest region. My programming responsibilities included oversight of the unique Z Channel.

6. I hold an MBA in Marketing Management from the Baruch School of Business in New York, New York and have spent ten years teaching Broadband Communications at George Mason University in Fairfax, Virginia.

7. In 1991, I was inducted as a member of the Cable Television Pioneers. Founded in 1966, the Cable Television Pioneers is an independent organization of individuals recognized and honored for their contributions to the cable television industry. I was chosen based on my marketing success having achieved one of the highest revenue per sub rankings in the industry and my programming innovativeness.

B. Discussion of Neighborhooding

8. I was recently asked by Bloomberg L.P. ("Bloomberg") to provide an opinion on questions involving the "neighborhooding" of similar types of programming channels and specifically to respond to certain assertions and opinions offered by Comcast Cable Communications LLC ("Comcast") in its answer to a Complaint filed by Bloomberg with the Federal Communications Commission.

9. In connection with preparing this Declaration, I have reviewed various documents, including Bloomberg's Complaint, as well as the Answer of Comcast, including all exhibits and attachments, specifically including the Declaration of Michael Egan, Exhibit 4 to the Comcast Answer.

10. Below, I have outlined my understanding of a neighborhood of programming channels, including the purpose behind such channel groupings and what would constitute a neighborhood in terms of numbers of channels.

11. The notion of grouping like-minded channels together dates back to the early days of cable. Few cable customers have the ability to remember the channel numbers of any more than eight to twelve channels, the average number of channels viewers watch. Programmers and equipment manufacturers have taken note of this. Indeed, so important is this concept of neighborhooding that it was my experience in negotiating agreements that cable programmers would regularly include "adjacency language" in their contracts, i.e., provisions requesting proximity to competitive channels in the same genre. This is all in an effort to garner additional viewers and thus advertising revenue for the channel. Equipment manufacturers now incorporate a scan button (the button on a cable remote control allowing the viewer to move up and down on channel lineups) on set-top box remote control devices because they recognize the importance of neighborhooding to facilitate viewer selection among channels of a similar genre.

12. There is nothing random about cable television system lineups. I have prepared contracts on behalf of over 100 cable systems and negotiated with every major programmer of late. I can assure you if grouping similar channels together was not an important consideration, each of these programmers would not have insisted upon adjacency language in their contracts. The programmers go so far as to insist that if it is not adjacent, that it be within one or two channels of programming of a similar genre.

13. This kind of grouping of channels together is also driven by what cable consumers wish to have. It is my experience that cable consumers want to simplify their lives and save time. Further, it is my experience that the concept of a channel neighborhood accomplishes this objective for the consumer in that it groups their channels of choice together. The less time that viewers have to search elsewhere to satisfy their tastes, the more time they can spend viewing the programming

that they prefer. Moreover, once satisfied with their viewing choice, consumers will typically not search elsewhere for programming, except perhaps to search for a channel that is showing a unique event.

14. How many channels are necessary to constitute a neighborhood? I have reviewed the assertion by Comcast and Mr. Egan that "a truly effective neighborhood might well require inclusion of two-thirds (66%) or more of the news channels? (Paragraph 13 of Egan Declaration) This is an arbitrary statement without factual support.

15. In my opinion, Bloomberg has correctly asserted that a news neighborhood consists of at least four news channels located in any block of five adjacent channel positions. (Complaint, ¶ 75). This specifically includes the five principal news channels identified by Bloomberg in their Complaint, i.e., CNN, HLN (formerly CNN Headline News), Fox News Channel, MSNBC and CNBC, as forming the existing news neighborhoods on Comcast systems.

16. As an initial matter, this is in part because it is the quality of the channels that defines a neighborhood. These five principal news channels garner the lion's share of audience and define the category of news channel. The numerical analysis that Comcast proffers seems to weigh all news channels the same, which they are not.

17. Based upon my experience, the news channel groupings on Comcast systems identified by Bloomberg are recognized as neighborhoods by those in the MVPD industry because MVPDs recognize that the pareto principle applies here (i.e. the 80/20 rule). The majority of the viewership and advertising dollars comes from a minority of the channels. In terms of audience share, advertising revenue, or any other measure, these five channels cited by Bloomberg are by far

and away the ones that have the name recognition and are at the core of the definition of what constitutes a news neighborhood.

18. In arbitrarily asserting that 10 or more channels constitute a news neighborhood, Comcast appears to work backwards to arrive at a number. Not all channels are equal or have the same drawing power. The more important question is where subscribers go for their news. In my opinion, the news channel groupings on Comcast systems identified by Bloomberg in its Complaint would be recognized by cable professionals as news neighborhoods. Although the larger channel groupings also identified by Comcast are also news neighborhoods, both of these channel groupings contain the four or five anchor channels that dominate the ratings and are where cable subscribers spend their time viewing and advertisers spend their dollars.

19. Channel brand recognition and ratings strength are what drives viewership. Once they land in a neighborhood or grouping of channels, subscribers often scan up or down with their remote often visiting similarly themed channels. For this reason, it is important to be located in a neighborhood. It is the same reason why McDonald's locates on a busy street corner near Burger King hoping to steal some of the same traffic. Given that the FCC has clearly directed that independent news channels such as Bloomberg's BTV be included in news neighborhoods, it is difficult to escape the conclusion that Comcast is vigorously opposing implementation of this condition in existing news neighborhoods to protect content that it owns and controls, such as CNBC and MSNBC.

20. Comcast also alleges practical difficulties in implementing the news neighborhood condition to include BTV in news neighborhoods. Comcast incorrectly asserts that channel lineups are essentially locked up and that accepting Bloomberg's definition of news neighborhoods would

have a "domino effect" on channel positions of existing programmers. In fact, channel lineups change with some frequency. My review of data obtained from Tribune Media Services shows conclusively that Comcast has in general changed channel lineups frequently, and in particular, has done so to reorganize channels over the last year so that news and sports content affiliated with Comcast appears in the principal news and sports neighborhoods. Comcast has done this to put affiliated news and sports content in the neighborhoods that contain the major news and sports channels, respectively.

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

Dated: August 29, 2011

Donald Mathison

Donald Mathison

EXHIBIT F

FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Complaint of	)	
	)	
BLOOMBERG L.P.	)	MB Docket No. 11-104
	)	
v.	)	
	)	
COMCAST CABLE COMMUNICATIONS, LLC	)	
	)	
	)	
	)	

DECLARATION OF SUSAN ARNOLD

I, Susan Arnold, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Susan Arnold. My business address is 1278 Forest Trails Drive, Castle Rock, CO 80108.

2. I have over fifteen years of experience working in media operations, including over a decade as a senior executive at one of the top multichannel video programming distributors in the United States. I have extensive experience negotiating programming contracts and content rights, working with programmers, engaging in strategic planning, and managing advertisement sales, among other duties.

3. From 1995-2007, I served as a senior executive at Echostar Communications Corporation (DISH Network). DISH Network is one of the leading direct broadcast satellite television providers in the United States, and provides programming to more than 14 million subscribers. As Vice-President of Programming, I was responsible for Video on Demand (VOD), Pay-Per-View (PPV), International Sports Acquisition, Ad Sales and the Interactive Television

business units. These units represented approximately $1 billion in annual revenue. In paragraphs 4-8 below, I explain what my responsibilities were with respect to each of those units.

4. VOD/PPV Units: I established and built the PPV and VOD Department from inception into a half-billion dollar enterprise for DISH Network. I also negotiated each and every DISH Network contract with major and independent studios, sports content providers and event promoters. I also developed and implemented national and regional marketing strategies and programs in support of PPV and VOD and I worked closely with my programming colleagues and DISH Network engineers regarding the launch and channel placement, including where channels resided on the Electronic Programming Guide ("EPG"), of not only VOD/PPV channels, but all of DISH Network's programming channels.

5. Sports Acquisition: I negotiated North American sports rights for television and Internet for hundreds of soccer and cricket events, including exclusive World Cup Cricket rights and exclusive South American World Cup Qualifier rights for soccer. I also negotiated all contracts for U.S. Sports packages including NBA League Pass, MLB Extra Innings, NHL Centre Ice, ESPN Full Court, ESPN Game Plan, and MLS Shootout. I was also responsible for marketing, finance and operations associated with these products. In every negotiation regarding carriage of the programming services above, I dealt directly with the issue of where services would reside on the EPG.

6. Ad Sales: I managed the Ad Sales business for DISH Network,. In that capacity, I oversaw relationships with outside contractors and vendors such as Nielson Media and Turner Media, and spearheaded infrastructure developments needed to grow the business, such as viewer measurement data, and insertion capability. As a result of my experience managing DISH Network's ad sales department, I developed a keen understanding of the economic value of channel placement on the EPG (i.e., how channel placement impacts ratings and therefore advertising rates).

7. Interactive Television: I oversaw the design and development of the portal for interactive television on DISH Network and led related programming meetings. I was responsible for the strategic planning of interactive channels that would enhance the consumer experience on DISH Network. I also spearheaded and led programming development meetings. As a result of my experience managing DISH Network's interactive television platform, I developed a keen understanding of the economic value of channel placement on the EPG (i.e., how placement of the "Mosaic" service, for example, at a channel number below 150 would increase its viewership).

8. Prior to becoming Vice President of Programming, I served as the Director of PPV and International Programming at DISH Network. In that capacity, I worked with domestic and international programmers, negotiated contracts, and gave strategic input regarding DISH Network's domestic and international programming mix, channel placement, packaging and pricing.

9. I was recently asked by Bloomberg L.P. ("Bloomberg") to provide an opinion on several programming issues including (i) the practice of neighborhooding and what constitutes a neighborhood in the industry, along with the relative value of various channel placements; (ii) what channels are viewed as news channels; and (iii) the practice of moving a network from one channel position to another channel position.

10. I have reviewed Bloomberg's Complaint and the Answer of Comcast Cable Communications, LLC in the above-captioned proceeding, including all exhibits and attachments and the programming schedule for many cable and multicast network channels.

11. In what follows, I explain the practice of neighborhooding, how many channels and channel genres are viewed, and the process of moving a network, such as Bloomberg Television ("BTV"), from one channel position to another.

I. WHAT IS A NEIGHBORHOOD?

12. I agree with Mr. Egan that there is no specific "definition of a news neighborhood among industry professionals." Answer, Ex. 4 at ¶ 11. My experience in the MVPD industry, however, has been that a neighborhood or cluster consists of a group of channels that come from a similar genre and are placed next to one another to be more easily identified and found by viewers.

13. My experience in the industry leads me to conclude that this practice benefits viewers, operators and networks. First, it enables viewers to more easily find and watch programming in which they are most interested and in turn benefits operators because viewers are thus happier with their service. Similarly, because viewers use their remote controls to scroll through their programming guide, channels in the same genre will experience increased viewership by being placed in close proximity to one another.

14. In my various roles as a programming executive at DISH Network, I witnessed the effects of neighborhooding and channel placement. First, when placing so-called "barker" channels that promoted PPV events on the EPG, I witnessed that the placement of the barker channel lower in the EPG and next to a top-rated network of the same genre resulted in a significant increase in buy rates for that PPV event.

15. Second, in the foreign-language and movie genres, I witnessed the increase in subscriber upgrades to more expensive programming tiers when channels available only on the higher tier were placed on the EPG next to channels of the same genre available on less expensive tiers. The subscribers to the less expensive tiers would see on their EPG the existence of additional channels of the same genre and want to watch them. The only way they could do so was by upgrading to the higher service tier. So by placing channels of the same genre together on the EPG, DISH Network was able to promote greater subscriber upgrades to more expensive tiers.

16. In my experience, the touchstone for clustering or neighborhooding is whether the operator is intentionally placing channels of a similar genre near each other in an effort to increase overall viewership. Thus, whether or not the cluster or neighborhood can be easily identified, found, and remembered are important elements in creating an effective neighborhood. Within the MVPD industry, 3 or 4 channels placed together can be sufficient to successfully attract viewers attention and their placement on the system can be "bookmarked" or remembered so that it can be easily found later. Such neighborhoods or clusters can more easily exist when the programming has one or two anchor channels that are particularly popular within that genre.

17. The neighborhooding concept applies to genres other than news. For example, a group of four sports channels, four Spanish language channels or four children's channels in any block of five channel positions would, in my opinion, constitute a neighborhood of channels. In my experience, however, news channels benefit even more from neighborhooding than do other genres because what I will call "news aficionados" tend to flip between news networks more frequently than do viewers of movie, drama, sports, or other long-form programming.

18. Bloomberg has identified in Exhibit H of its Complaint 368 groupings where there are at least four news channels in a block of five adjacent channel positions. Most of these groupings included easily recognized news channels such as CNN, Headline News, MSNBC, Fox News, and CNBC. In my opinion, based on my experience in the industry, such groupings of the most popular news channels would be recognized as neighborhoods by those in the MVPD industry.

19. Moreover, if a subscriber comes across a group of four major news channels such as CNN, MSNBC, CNBC, or Fox News, he or she would reasonably conclude that such a group is a news neighborhood, and he or she would remember the general area as where the MVPD places its news programming. This is particularly true given the relatively high ratings of the aforementioned

news networks because a subscriber who recognizes, say, CNN as a news network probably would conclude that a channel next to it on the EPG also is a news network.

20. Comcast asserts that in order to be a channel neighborhood, a group of channels must comprise a large percentage or number of all networks in that genre. I disagree. In my opinion, the key factor is the effectiveness of similarly-themed channels grouped together in attracting viewers and facilitating their finding and watching the relevant programming. Such a number can be quite small in constituting a neighborhood. For example, in my experience dealing with foreign language programming, I saw that two or three French language channels placed next to one another on the EPG would be considered by subscribers to be a neighborhood of French channels. This was true despite the fact that worldwide, there were many more French language channels in existence. In addition, even within DISH Network, there might be other French channels scattered throughout the service. The grouping of three French channels together, though, created a neighborhood.

II. WHAT IS A NEWS CHANNEL?

21. Comcast includes many types of channels in their definition of "news" that I would say are not appropriately classified as news. In my opinion and based on my experience, several categories cited by Comcast would not typically be included in such news neighborhoods:

22. Sports – "Sports news channels" in my opinion are not news channels but rather sports channels. For example, when I was in charge of PPV, if I had an upcoming boxing match to promote and I had a choice between putting the promotional "barker" channel next to CNBC or ESPN News, I would choose to put it next to ESPN News because I know that sports fans tend to watch that network, while news and business viewers tend to watch CNBC.

23. Foreign Language – "Foreign-language news channels" need not be included in a group of channels in order to create a news neighborhood. When I managed DISH Network's ad

sales department, if I wanted to offer to a potential advertiser a "buy" on news channels, I would not include foreign language news services because those services address a completely different demographic market segment than, say, CNBC, CNN, Fox News, or MSNBC. Therefore, I do not view foreign language news channels as an appropriate part of a news neighborhood.

24. Weather – Weather channels in my opinion are similar to sports news channels in that they are a distinct category and should not be grouped with more broadly based news channels such as MSNBC, CNN, Fox News or CNBC. If CNBC were placed in the electronic programming guide next to three weather channels (i.e. The Weather Channel, Weatherscan Local Network and a local twenty-four weather feed), I would not say that CNBC was in a news neighborhood, but rather that CNBC was next to a weather neighborhood.

25. Current TV – Having reviewed the programming content on Current TV, in my opinion it would not fall under the news category. Most of Current TV's programming is comprised of documentaries and non-news programming. As a programming executive, I would not group it in a news neighborhood and as an ad sales executive I would not sell it as part of a news group.

26. HD Feeds – HD Feeds should not be counted as two separate channels because the programming is primarily the same on both the SD and HD feed.

27. Multicast Streams – Having reviewed some of the programming schedules and content descriptions of the multicast channels identified by Comcast, they do not seem to focus on public affairs, business, or local news reporting or analysis between 6:00 a.m. and 4:00 p.m., but rather nature and outdoors programming, historical documentaries, and other non-news. As such, I would not consider them to be news channels similar to the likes of MSNBC, CNN, Fox News, Bloomberg or CNBC. In addition, it is my experience that in the MVPD industry, multicast channels are considered to be broadcast channels and not news channels.

28. The examples below are a non-exhaustive list of channels identified by Comcast as news but that, in my opinion, do not fit the news genre and need not appropriately be included in a channel grouping in order to create a "news" neighborhood:

I reviewed the scheduled programming for the following channels that Comcast alleges are news channels and have determined that they should not be classified as news channels because they feature primarily local weather forecasts and/or radar: KAREDT2, KCPQDT2, KHQDT2, KSHBDT2, KSLDT3, KTCADT4, KUSADT2, KXTVDT2, Local Weather, NBC Plus, WDTVDT2, WFMZDT2, WFSBDT3, WFTVDT2, WHTMDT3, WIPBDT3, WISHDT2, WISHDT3, WJLADT2, WKRNDT2, WKYUDT3, WMARDT3, WPTVDT2, WTHRDT2, Weatherscan Local Network, and WTSPDT2.

I reviewed the scheduled programming for the following channels that Comcast alleges are news channels and have determined that the following channels are Public Broadcasting Service World feeds: WGBXDT2, WGBYDT2, WLIWDT3, WPSUDT3, WTIUDT2, and WVTADT4. These channels focus on cultural and information programming and should not be classified as news channels. Examples of programming featured between 6 a.m. and 4 p.m. on these channels are "POV," "Nature," and "Nova".

I reviewed the scheduled programming for the following channels Comcast alleges are news channels and determined that the following channels feature community oriented or informational programming and should not be classified as news channels: KCRT Cable, KQEDDT3, KTCADT2, KUEDDT2, City of Houston- The Municipal Channel, WGTVDT3, WHYYDT3, WKGBDT3, WNEODT2, and WTVJDT2. Examples of programming featured between 6 a.m. and 4 p.m. are "Outdoor Wisconsin," "Nova," "The Grill Sergeants," "The Buffalo Flows," and "Peter Pan: Kentucky Ballet Theatre."

I reviewed the scheduled programming for the Community Bulletin Board channel and have determined that it should not be classified is not a news channel. The channel displays written messages submitted by local non-commercial entities.

I reviewed the scheduled programming for the Comcast 100 channel and do not believe that it should be classified as a news channel. According to programming information available on the Internet, the channel airs paid programming between 6 a.m. and noon and carries much non-news programming at other times.. Examples of programming featured include "Comcast Cares 2011," "Backstage Beauty and the Beast," and "Seeking Solutions with Suzanne."

I reviewed the scheduled programming for Tango Traffic and WPHLDT4, a stream of Tango Traffic. They air 24 hour programming relating to traffic conditions and should not be classified as news channels.

I reviewed the scheduled programming WBCCDT4, which is a Public Broadcasting Service channel that focuses its programming on the arts. I do not believe that it should be considered a news channel.

I reviewed the scheduled programming for LINK TV. That channel focuses on foreign cultural and informational programming and should not be classified as a news channel. Examples of programming featured between 6 a.m. and 4 p.m. are "A Dollar a Day: Made in China," "Rebecca's Wild Farm," and "World Music Blocks."

I reviewed the scheduled programming for WNVTDT8. That channel broadcasts RT Español, the Russia Today channel in the Spanish language. WNVTDT8 should be classified as a Spanish-language channel rather than a news channel for purposes of neighborhooding.

I reviewed the scheduled programming for WNCNDT3. That channel features paid and sports programming between the hours of 6 a.m. and 4 p.m. and should not be classified as a news channel.

I reviewed the scheduled programming for the following channels and determined that they feature primarily foreign news programming: KBDIDT3, KBTCDT2, KUENDT2, WDSCDT3, WHTJDT3, WNEODT3, WNVC, WNVCDT, WNVCDT2, WNVCDT4, WNVCDT5, WNVTDT, WNVTDT2, WNVTDT4, WNVTDT5, WNVTDT6, and WNVTDT7.

III. THE ABILITY TO MOVE CHANNELS

29. In my capacity managing DISH Network's PPV, International, International Sports, and Interactive TV products, I oversaw multiple reconfigurations of the channel lineup as new services were added and old services dropped. As a general matter, the executive team at DISH Network measured subscriber dislocation in terms of call volume to the call centers. In my experience, changes to the channel lineup did not create a troubling call volume if the proper marketing and consumer communication actions were taken in advance of, and concurrently to

those lineup changes. For example, when DISH had to change many of the international channel locations due to satellite capacity issues, calls to the call centers were minimal due to the successful execution of customer communication tactics implemented far in advance of the changes. In addition, from a technology perspective, it was my experience that adding, rearranging, or taking down channels within the EPG was a fairly straightforward task.

CONCLUSION

30. For all of these reasons, I conclude (i) a neighborhood can consist of as few as three or four similarly themed channels placed in a five channel block; (ii) HD feeds, sports news channels, foreign language news channels, weather channels, Current TV and broadcast multicast channels should be excluded from the calculation of news channels for purposes of defining a "news neighborhood," and (iii) the movement of a channel from one position to another in a digital environment should be easy from a technical perspective and can be done with minimal consumer disruption if properly marketed and communicated.

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

Dated: Washington, DC

FOR PUBLIC INSPECTION

Dated: August 30, 2011

Susan Arnold

Susan Arnold

Appendix A

Susan K. Arnold CV

FOR PUBLIC INSPECTION

Susan K. Arnold

1278 Forest Trails Dr., Castle Rock, CO 80108 • C: 720-272-7205 • susan.arnold@comcast.net • linkedin.com/in/susankarnold

SENIOR BUSINESS DEVELOPMENT EXECUTIVE

Business Development • Project Management • Leadership

Over fifteen years experience formulating business strategies and launching new business units in high-tech industry. Proven track record of successful sales, marketing and business leadership. Unique blend of entrepreneurial drive, financial management and strong negotiating skills.

Expertise creating and managing new profit centers. Successes include establishment of business units for a start-up company that grew into a Fortune 250 organization. The successful operation of these business units generated over a $1 billion in revenue annually.

AREAS OF EXPERTISE

- Programming Acquisition
- Packaging and Placement Strategy
- Channel Development and Launch
- Budget and P&L Management
- Scheduling and Uplink Operations
- Branding, PR and Cross Promotion

PROFESSIONAL EXPERIENCE

ARNOLDCLAN CONSULTING, LLC – Denver, CO **2009 – Present**

A consulting company assisting clients with product strategy, content acquisition, internet and television distribution and marketing expertise.

President

HOTHOUSE MEDIA, LLC – Denver, CO **2007 - 2009**

A video product strategy, content development and distribution company that leverages high-level relationships and expertise across a range of distribution platforms - cable, satellite, broadband, and mobile.

Senior Vice-President, Business Development

- Negotiated, structured and closed key consulting contracts with several media companies including Liberty Media Group, Imagina US and InJoy Birth & Parenting Videos
- Formulated financial models associated with launching full time television channels, sports packages and video-on-demand products
- Developed sales and distribution plans for clients and assisted with sales of services to executives with the top satellite, cable and telecommunications companies
- Utilized programming knowledge to obtain critical information for clients regarding programming renewals, content needs and revenue forecasting
- Continuous development of key business relationships with C-level executives

ECHOSTAR COMMUNICATIONS CORPORATION (DISH NETWORK) – Denver, CO **1995 – 2007**

One of the leading direct broadcast satellite TV providers in the US, providing programming to more than 13 million subscribers. Customers include home viewers as well as business customers in such industries as hospitality, restaurants, and retail.

Vice-President of Programming

Responsible for Video-On-Demand, Pay-Per-View, International Sports Acquisition, Ad Sales and Interactive Television business units representing approximately $1B in annual revenue. Responsibilities for each business unit were as follows:

Pay-Per-View (PPV) and Video-On-Demand (VOD)

- Established and built the PPV and VOD Department from inception into a half-billion dollar enterprise for DISH Network
- Negotiated all DISH Network contracts with major and independent studios, sports content providers and event

Susan K. Arnold

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promoters
- Performed all financial analysis and was decision maker concerning profit and loss for PPV and VOD business unit
- Formulated annual budgets, revenue projections, product costs, marketing plans and personnel requirements
- Developed and implemented national and regional marketing strategies and programs in support of PPV and VOD
- Responsible for overseeing all operational aspects of the business including channel placement, content scheduling, satellite and fiber transport, call center data, online and automated telephone ordering and all uplink requirements
- Oversaw design and development plans for VOD, including designing the user interface and all functionality requirements
- Managed a staff of 40 direct reports in the areas of marketing, operations, and financial reporting

International and Domestic Sports Acquisition
- Negotiated exclusive (and non-exclusive) North American sports rights for television and internet for hundreds of soccer and cricket events, including exclusive World Cup Cricket rights and exclusive South American World Cup Qualifier rights for soccer
- Negotiated all contracts for US sports products including NBA League Pass, MLB Extra Innings, NHL Centre Ice, ESPN Full Court, ESPN Game Plan and MLS Shootout
- Negotiated all deals to sub-license content rights when available into Canada and the Caribbean
- Responsible for all marketing, finance and operations related to international and domestic sports content

Ad Sales
- Managed DISH Network $200+ million Ad Sales business
- Increased ad sales revenue over 180% in a three year period
- Supervised staff of 50+ employees (internal & external)
- Oversaw relationships with outside contractors and vendors (e.g., Nielsen Media, Turner Media)
- Spearheaded all technological infrastructure developments needed to continue to grow the business rapidly (e.g., viewer measurement data, expand insertion capability on numerous channels, ability to localize commercials)

Interactive Television (ITV)
- Responsible for strategic planning for interactive channels that would enhance consumer experience on DISH Network (e.g., upgrade programming or pay bill via remote, CNN Enhanced, interactive weather application)
- Oversaw design and development of portal for interactive television on DISH Network (channel 100)
- Spearheaded and led engineering and programming development meetings
- Responsible for annual budgets, revenue projections, marketing strategies and product costs
- Managed direct reports in areas of negotiations, marketing, strategic development and financial reporting

Additional positions held with EchoStar:

Director of Pay-Per-View and International Programming
- Worked with domestic and international programmers, negotiated contracts, gave strategic input for domestic and international programming mix and oversaw channel launches, including channel placement decisions

THUNDERBIRD ASSOCIATED STUDENT LEGISLATIVE COUNCIL – Glendale, AZ **1994 - 1995**
Vice-President
- Managed ASLC operations and coordinated Steering Committee
- Served as Chairman of the Program Board
- Budget management ($25K per semester)
- Hired and managed staff of over 50 employees including those for Election Committee, Orientation Team, Graduation Committee and Fortune (Yearbook) Editor

HONEYWELL – Denver, CO **1992 - 1994**

Susan K. Arnold

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Project Associate

- Developed and implemented a system used to track revenue and expense of each construction project Honeywell was involved with at the new Denver International Airport

HONEYWELL – Munich, Germany **1990 - 1992**
Marketing Associate

- Created and published a Project Management Manual outlining Honeywell's role at the new Munich II Airport. The Manual was designed to be used across cultures to over 500 employees and customers worldwide

EDUCATION

THUNDERBIRD SCHOOL OF GLOBAL MANAGEMENT – Glendale, AZ **1995**
Masters of International Management (MIM)

- Team member of Thunderbird Corporate Consulting Program - Rural Metro Corporation Mexican Market Analysis and Entry Strategy
- Team member of Advanced Consumer Marketing Seminar - Univision Television
- Advanced German Finance and Marketing language studies
- Secondary concentration in Corporate Finance

GOETHE INSTITUTE – Munich, Germany **1992**
German Language Studies

UNIVERSITY OF COLORADO - Boulder, CO **1990**
Bachelor of Science, International Business & Marketing

SALZBURG COLLEGE – Salzburg, Austria **1989**
Study Abroad Program: Emphasis on International Business, Culture and Arts

OTHER

- Languages: English and conversant in German
- Memberships: Mentor for the Women's Vision Foundation, Certified L.E.A.N Start Coach (Lifestyle, Exercise, Attitude and Nutrition), Habitat for Humanity Volunteer
- Interests: Skiing, Mountain Biking, Traveling and Languages

EXHIBIT G

FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Complaint of	)	
	)	
BLOOMBERG L.P.	)	MB Docket No. 11-104
	)	
v.	)	
	)	
COMCAST CABLE COMMUNICATIONS, LLC	)	
	)	
	)	
	)	

DECLARATION OF ADAM GOLDBERG

I, Adam Goldberg, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Adam Goldberg. My business address is 3003 Barkley Gate Lane, Fairfax, VA 22031.

2. I have nineteen years of experience working as a technology consultant, software engineer, and public policy advocate in the media and consumer electronics industry and for software and technology companies. I am a senior member of the Institute of Electrical and Electronic Engineers (IEEE) and hold a patent in digital closed captioning technology (U.S. Patent #6,097,439).

3. From May of 1992 through March of 1995, I served as a senior software engineer at Microware Systems Corp. Microware Systems develops and supports sophisticated real-time operating system software, network and communications software, and development tools for

embedded systems, communications, and consumer products. In that capacity, I was a member of the team that developed one of the first middleware operating environments for digital television receivers.

4. From March of 1995 through June of 2000, I worked as an engineer at Harmonic, Inc. In that capacity, while serving in the Consumer Network Products division, I led a team that was responsible for the planning, scheduling, software architecture, and engineering design related to porting software into a new processor and operating system. I was also a member of the silicon chip engineering team that designed a set-top integration chip and a member of the software team that was successful in bringing a multiple network digital set-top box to production. Among other responsibilities, my duties included work on the system design and architecture, portions of networking protocols, MPEG decoder driver, MPEG decoder chip microde specification, video digital-analog-converter controls (analog-digital switching), and lab network design.

5. Also while at Harmonic, I was a key member of the group responsible for standards activities. I was the primary delegate to the Digital Video Broadcasting project (DVB) (and chair of the DVB Simulcrypt committee), and co-founder of OpenCAS (an early attempt at separating set-top box hardware from security systems). I was the primary architect and editor of the Advanced Television Systems Committee (ATSC) Standard for Conditional Access (ATSC A/70). As a key member of the architectural decision making team, I analyzed end-to-end digital and hybrid television systems and served as an internal consultant on end-to-end television system issues and related standards work.

6. From July of 2000 to April of 2001, I served as the Director of Exodus Communications. Exodus Communications was a leading Internet infrastructure services group that offered many services, including high-end web hosting, collocation assistance, network access, and

network storage. In that capacity, I built a technical advisory and planning team to develop technology applications for new high value-add managed service product offerings. I also worked with others at the organization on the implementation of these offerings.

7. From May of 2001 through June of 2006, I served as the Director of Television Standards and Policy Development at Sharp Laboratories of America. Sharp Laboratories operates a research and development laboratory that offers services related to consumer systems and technology, digital imaging systems, and advanced video and display technology. In that capacity, I served as the primary standards representative to ATSC, Society of Cable Telecommunications Engineers (SCTE), and Consumer Electronics Association (CEA). I also co-chaired the Copy Protection Technical Working Group (CPTWG), participated in DVB Copy Protection activities, and was involved with other international organizations. I contributed significantly to the industry's "Cable-Ready Plug & Play" technical specifications and negotiations and worked on Enhanced 8-VSB signaling issues. I also coordinated and directed television-related standards activities in the United States, including digital television, cable television, and copy protection issues.

8. From June of 2006 through November of 2008, I served as Vice President of Government and Industry Affairs at Pioneer North America, Inc. Pioneer was an innovative leader in television, cable set-top box, and optical disc technologies and a manufacturer of innovative high-tech entertainment and electronic products such as high-performance audio, video and computer equipment for the home, car and business markets. As head of the Washington office, I served as the primary federal representative for Pioneer's home and mobile entertainment divisions. I coordinated and developed technology policy positions with international and domestic divisions of the company. I also coordinated, directed and implemented regulatory and lobbying activities related to those policies. I also initiated, developed, planned and implemented technology

demonstrations. While at Pioneer, I chaired the consumer electronics industry's negotiations with the cable television industry on the compatibility of retail devices with cable networks. I also represented Pioneer on the Consumer Electronics Association's Video Board, chaired CEA's Television Manufacturer's Caucus, and was elected vice-chair of the CEA Technology and Standards Council (2009 term). I also served as a Member of the ATSC Board of Directors.

9. Since December of 2008, I have been an independent consultant specializing in strategic marketing, technical challenges and public policy for the digital television industry. In this role, I have assisted companies in developing and refining business strategies for digital cable devices and digital television. I have also assisted clients in evaluating and planning content protection and anti-piracy measures, and have served as an occasional expert witness.

10. I am co-author of two papers relating to the implementation of digital television system information and digital television receivers, which include discussions of channel number signaling: (1) B. J. Lechner, R. Chernock, M. K. Eyer, A. Goldberg and M. S. Goldman, "The ATSC Transport Layer, Including Program and System Information Protocol (PSIP)," *Proceedings of the IEEE Special Issue on Global Digital Television: Technology and Emerging Services*, vol. 94, no. 1, pp. 77-101, Jan. 2006; (2) J. G. N. Henderson, M. S. Deiss, A. Goldberg, B. Markwalter, M. Muterspaugh, and A. Touzni, "ATSC DTV Receiver Implementation," *Proceedings of the IEEE Special Issue on Global Digital Television: Technology and Emerging Services*, vol. 94, no. 1, pp. 119-147, Jan. 2006.

11. I have also presented (or will present) papers on various technical topics, including those involving digital television and cable television, at the following forums:

Audio Engineering Society (AES) Convention, October 2011
IEEE Broadcast Technology Society Symposium, October 2009, October 2011
Sports Transmission Forum, May 2009
Korea Broadcast, Audio, Lighting Equipment Show, 2009, 2010

NAB Engineering Conference, 2002, 2004, 2006
Consumer Electronics Show, 2007
IEEE International Conference on Consumer Electronics, 2003, 2005
Hollywood Post Alliance Technology Retreat, 2005, 2006, 2009

12. I was recently asked by Bloomberg L.P. ("Bloomberg") to provide an opinion on technical issues related to moving a network from one channel position to another channel position. I have also reviewed the Answer of Comcast Cable Communications, LLC in the above-captioned proceeding, including all exhibits and attachments.

13. In what follows, I explain the process of moving a network, such as Bloomberg Television ("BTV") from one channel position to another on a cable system, which is relatively simple as a technical matter.

14. In the digital environment, moving a network from one channel position to another is not complicated from an engineering perspective. It is important to understand that the channel numbers displayed to users in a digital cable television system are unrelated to the frequency used to transmit the audiovisual content to users. In a digital system, channel numbers thus are arbitrary and are merely a reference to the programming.

15. Each channel in a digital system consists of a set of video, audio and other components. Digital cable systems supply data structures which list these components, the RF frequency that they are carried on, and other data, including the channel number. A receiver tunes to a channel by reading the data structure, tuning to the proper RF frequency, and selecting the appropriate audio and video components.

16. In this digital environment, the channel number is merely a data field that contains a number which is presented to a user, and that a user uses to identify his or her desired programming.

17. As a result, changing the channel number of a network (such as BTV) consists of merely supplying a different number in that network's channel number field, which is simple from a technical perspective. This is accomplished simply by changing software settings in the devices that update and maintain the "system information" for the cable systems ("system information" is a term that describes the data regarding the system, including channel numbers, language codes, and other information).

18. Such updates, management and configuration of system information are a common and generally simple operation.

19. Changing channel positions in a digital environment does not require any change in the frequency used to transmit a network's audiovisual content.

20. In the analog environment, moving a network from one channel position to another involves slight changes to channel distribution configuration. This may involve software configuration changes (where video distribution routers are used), or could (at most) involve physically swapping a pair of cables at a headend. In short, changing channel positions in an analog environment is still relatively simple from an engineering perspective.

21. The changes necessary to move analog channels within the lineup may involve a small amount of operational work to reconfigure system information or swap cables at headends, but do not require widespread or overly burdensome engineering tasks. Furthermore, lineup changes are planned events, which occur periodically. The channel positioning realignment sought by Bloomberg would be no more complicated or burdensome than lineup changes initiated by Comcast for its own purposes.

22. In fact, Comcast's own expert agrees with my conclusion that at most minor engineering changes are necessary to adjust the channel lineup: "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 . . ." (Answer, Ex. 3 at ¶ 20.)

23. For all of these reasons, I disagree with the statement made by Comcast that channel relocations "require Comcast to perform substantial physical engineering work at each affected system headend each time a relocation [is] required." (Answer at ¶ 85). This statement is not correct.

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

Dated: August 29, 2011

Adam Goldberg

Appendix A

Adam Goldberg
AGP, LLC
Fairfax, VA 22031
+1-202-507-9900
adam@agp-llc.com

Background

Wide ranging technical foundation, including engineering work on audio/video silicon products, real-time operating system development, set-top box development, and audio/video compression systems development and architecture, and internet technologies. Experience evaluating technology products for possible use. Experience with internet architectures, tracking internet technologies and future direction.

Significant experience with digital cable television standards-setting, interaction and interoperation with cable systems. Led consumer electronics interests in inter-industry discussions on cable compatibility.

Long experience participating in multi-industry forums, chairing and participating in technical standards committees, policy and strategy-forming groups, including international groups. Leader in consumer electronics standards-setting.

Employment History

12/08 – Present **Principal**
AGP, LLC

Independent consultant specializing in strategic marketing, technical challenges and public policy for the digital television industry.

6/06 – 11/08 **Vice President, Government and Industry Affairs**
Pioneer North America

Head of Pioneer's Washington office. Primary Federal representative for Pioneer's home and mobile entertainment divisions. Investigate technologies and their impact on public policy, and public policy's impact on products.

Coordinate and develop technology policy positions with international and domestic internal clients, including legal, senior executives and operations. Coordinate, direct and implement

regulatory and lobbying activities to implement those policies. Participate in various industry coalitions and trade groups representing Pioneer's interests. Participate in state and federal government workshops, stakeholder meetings and similar forums representing Pioneer's interests. Initiate, develop, plan and implement technology demonstrations to government decision-makers.

Chaired the Consumer Electronics industry's negotiations with the cable television industry on compatibility of retail devices with cable networks. Pioneer's representative on the Consumer Electronics Association's Video Board, chaired the Consumer Electronics Association's Television Manufacturer's Caucus (TVMC), elected vice-chair of the CEA Technology & Standards Council (2009 term). Member of the Advanced Television Systems Committee (ATSC) Board of Directors.

5/01 – 6/06 **Director, Television Standards & Policy Development**
Sharp Laboratories of America

Primary standards representative to ATSC, SCTE, and CEA standards developing committees. Co-Chair of the Copy Protection Technical Working Group (CPTWG), and participant in DVB Copy Protection activities and other international organizations.

Coordinate and direct television-related public policy activities, including interaction with the Federal Communications Commission, Federal and State Legislatures, and other government agencies. Coordinate and direct television-related standards activities in the United States, including digital television, cable television and copy protection issues.

Maintain standards library, memberships in standards developing organizations. Provide liaison and education between Sharp Corporation world-wide and United States television and related standards activities (including Copy Protection technical, business, legal and public policy matters).

Significant contributor to the industry "Cable-Ready Plug & Play" technical specifications and negotiations, and to e.g., Enhanced 8-VSB signaling issues. Chair, Society of Cable Telecommunications (SCTE) Digital Video Subcommittee (DVS) Working Group 2 (Transport).

7/00 – 4/01 **Director**
Exodus Communications (formerly GlobalCenter)

Built a technical advisory and architectural team to explore new technologies and develop applications of the technologies to new managed service (and other higher value-add) product offerings. Consult with product development organization on implementation details. Mandate included monitoring of relevant standards organizations (e.g., IETF) and industry trends.

3/95 – 6/00 **Staff Engineer, Harmonic, Inc.**
(Formerly C-Cube Microsystems, Formerly DiviCom, Inc.)

DiviCom division (now Harmonic)

Key member of corporate standards activities. Primary delegate to DVB (chair of DVB Simulcrypt committee) and co-founder of OpenCAS™. Primary architect and editor of the ATSC Standard for Conditional Access (ATSC A/70). Technical representative to standards organization, including CEA, SMPTE, DAVIC and TVAnytime.

Key member of corporate architectural decision making team. Analysis of end-to-end digital and hybrid television systems (contribution, distribution and emission) including reference model design and critical gap analysis.

Led team developing architecture of event-based scheduling of equipment reconfiguration feature. Internal consultant on end-to-end television system issues and related standards and ongoing standards work.

Consumer Network Products division (acquired by LSI):

Lead of team porting software to new processor and operating system. Planning, schedule, software architecture and design. Also responsible for tracking vendor and subcontractor deliverables and schedule. Participated in contract negotiation.

Member of VLSI team designing a digital set-top integration chip. Tracking copy protection issues for inclusion of copy protection primitives in silicon.

Member of software team successful in bringing a multiple network digital set-top box to production. Duties included system design and architecture, portions of network stacks, MPEG decoder driver, MPEG decoder chip microcode specification, DAC controls (analog-digital switching, Macrovision copy protection issues), lab network design, vendor and customer interaction. (US Patent 6,097,439, other patent(s) pending).

5/92 – 3/95 **Sr. Software Engineer, Microware Systems Corp.**

Standards Activities

5/01 – present	Deeply involved in various CEA committees, elected to Video Division Board
11/97 – present	Deeply involved in various ATSC activities, elected to ATSC Board of Directors; Chair TSG/S7
11/97 – present	SCTE DVS
11/97 – present	SMPTE various standards efforts
2001 – 2006	CPTWG (consumer electronics co-chair)
11/98 – 6/06	DVB

1999 – 2000	IETF
9/95 – 12/97	DAVIC
3/95 – 9/95	MPEG DSM-CC

Awards

U.S. Patent #6,097,439

IEEE Senior Member

Papers Published

B. J. Lechner, R. Chernock, M. K. Eyer, A. Goldberg and M. S. Goldman, "The ATSC Transport Layer, Including Program and System Information Protocol (PSIP)", *Proceedings of the IEEE Special Issue on Global Digital Television: Technology and Emerging Services*, vol. 94, no. 1, pp. 77-101, Jan. 2006

J. G. N. Henderson, M. S. Deiss, A. Goldberg, B. Markwalter, M. Muterspaugh, and A. Touzni, "ATSC DTV Receiver Implementation", *Proceedings of the IEEE Special Issue on Global Digital Television: Technology and Emerging Services*, vol. 94, no. 1, pp. 119-147, Jan. 2006

Papers Presented

Audio Engineering Society (AES) Convention, October 2011*

IEEE Broadcast Technology Society Symposium, October 2009, October 2011*

Sports Transmission Forum, May 2009

Korea Broadcast, Audio, Lighting Equipment Show, 2009, 2010

NAB Engineering Conference 2002, 2004, 2006

Consumer Electronics Show 2007

IEEE International Conference on Consumer Electronics 2003, 2005

Hollywood Post Alliance Technology Retreat, 2005, 2006, 2009

* (future)

Education

B.S., Computer Science, Iowa State University, 1992

EXHIBIT H

REDACTED PURSUANT TO REQUEST FOR CONFIDENTIAL TREATMENT

EXHIBIT I

REDACTED PURSUANT TO REQUEST FOR CONFIDENTIAL TREATMENT