

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.

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

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.”

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.

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 headends⁷⁷ 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.”

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

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

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

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

¹⁰⁰ *Id.*, ¶ 40.

¹⁰¹ *Id.*, ¶ 22(c).

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[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

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

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'

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

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

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/xflinup/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.

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

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,

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.

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

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 *Checkovskiy 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

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

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

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

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

¹⁶⁵ *See supra* Section III.A.1.

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