

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of)
)
Bloomberg L.P.,)
)
Complainant,)
)
v.)
)
Comcast Cable Communications, LLC,)
)
Defendant.)

MB Docket No. 11-104

FILED/ACCEPTED

SEP 27 2011

Federal Communications Commission
Office of the Secretary

To: Chief, Media Bureau

SURREPLY OF COMCAST CABLE COMMUNICATIONS, LLC

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

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

September 27, 2011

Attorneys for Comcast Cable Communications, LLC

TABLE OF CONTENTS

EXHIBITS ii

INTRODUCTION AND SUMMARY1

I. BLOOMBERG’S NEW DEFINITION OF “SIGNIFICANT”
IS INCONSISTENT WITH THE PLAIN LANGUAGE OF THE CONDITION3

II. THE REPLY DEEPENS THE CONTRADICTION BETWEEN
BLOOMBERG’S CURRENT AND PRIOR FCC ADVOCACY7

III. BLOOMBERG ARBITRARILY EXCLUDES DOZENS OF
NEWS CHANNELS, UNDERSCORING THE SUBSTANTIAL
FIRST AMENDMENT CONCERNS RAISED BY THE COMPLAINT12

IV. THE DATA UNDERLYING BLOOMBERG’S FLAWED
CHANNEL MOVE ANALYSIS DEMONSTRATE
HOW EXCEEDINGLY RARE SUCH DISLOCATION IS18

CONCLUSION23

EXHIBITS

Exhibit 1 Supplemental Declaration of Michael Egan

- *Attachment A* – Programming schedule for WORLD
- *Attachment B* – Programming schedule for MHz Worldview
- *Attachment C* – Programming schedule for Current TV
- *Attachment D* – Programming schedule from Link TV website

Exhibit 2 Supplemental Declaration of Mark Israel

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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

SURREPLY OF COMCAST CABLE COMMUNICATIONS, LLC

1. Comcast Cable Communications, LLC (“Comcast”), pursuant to 47 C.F.R. §§ 76.1302(a) and 76.7(d), hereby files this Surreply to the Reply filed by Bloomberg L.P. (“Bloomberg”) in order to respond to the host of new and erroneous legal and factual assertions raised in Bloomberg’s Reply.¹

INTRODUCTION AND SUMMARY

2. In an eighty-two-page Reply attaching *seven new expert declarations*, Bloomberg attempts to salvage its Complaint² by introducing a host of new legal arguments and factual assertions. These new arguments and assertions not only lack merit, but Bloomberg’s decision to introduce them for the first time on Reply represents a flagrant violation of the Commission’s rules. As the Commission has recognized, matters accessible to the complainant at the time it

¹ Comcast is filing concurrently herewith a Motion for Leave to File Surreply.

² Except as otherwise defined herein, all capitalized terms in this Surreply have the meanings ascribed to them in the Answer.

filed its complaint “should [be] raised in earlier filings,” not strategically reserved for reply.³

Bloomberg’s reliance on such procedural gamesmanship underscores and confirms the fundamental lack of merit in its Complaint.

3. Comcast limits itself here to responding to those new arguments that distort the facts or contradict Bloomberg’s prior advocacy on the very same issues. These include the following:

- *First*, Bloomberg offers an entirely new and misguided approach to defining a news “neighborhood.” While the Complaint featured a purely statistical analysis, the Reply now presents five new experts who—for the first time—seek to define a “neighborhood” based on an array of factors relating to channel quality, *e.g.*, ratings, advertising, and branding. This approach to defining a news “neighborhood” contradicts the plain language of the Condition, which prescribes that news “neighborhoods” be defined by two factors—the “number” and “percentage” of news channels they contain.
- *Second*, Bloomberg now asserts that news neighborhoods are commonplace throughout the cable industry and have been since the “early days of cable.” But during the merger proceeding, Bloomberg (1) contended that cable operators generally did *not* neighborhood, though they might begin to do so as they transitioned to digital technology, and (2) professed concern that Comcast, as result of the Transaction, might not neighborhood its news channels, and therefore *should be compelled* to do so. Neither position can be reconciled with Bloomberg’s current stance—that news neighborhoods are pervasive, both on Comcast’s systems and on those of other cable providers. This reversal not only untethers the Condition from any potential Transaction-related harm, but also offends the doctrine of judicial estoppel, which “prohibit[s] parties from deliberately changing positions according to the exigencies of the moment.”⁴

³ *In the Matter of Curt Himmelman v. MCI Communications Corp.*, 17 FCC Rcd 5504, ¶ 19 & n.56 (2002) (striking assertions made in a reply brief in these circumstances); *cf. In re Application of Palm Bay Public Radio*, 6 FCC Rcd 1772, 1772 ¶ 4 & n.5 (1991) (providing that a party should be allowed, in the alternative, to respond to new arguments and assertions by filing “supplementary pleadings not ordinarily contemplated by the rules”).

⁴ *New Hampshire v. Maine*, 532 U.S. 742, 749–50 (2001) (citing *United States v. McCashey*, 7 F.3d 368, 378 (5th Cir. 1993)); *see also Aera Energy LLC v. Salazar*, 642 F.3d 212, 219 (D.C. Cir. 2011) (barring companies from arguing one position in one administrative proceeding and a contradictory position in another proceeding); *In the Matter of Time Warner Cable*, 21 FCC Rcd 9016, 9019–20 ¶ 13 (2006).

- *Third*, in order to inflate the apparent significance of a grouping of four news channels, Bloomberg’s new experts propose a grab bag of theories to reduce the number of “news channels” carried by Comcast. Bloomberg’s experts argue that some channels provide insufficient levels of “reporting or analysis” to count as “news channels”; that others carry documentaries that are of insufficient import to count as “public affairs”; and that still others address disfavored topics such as weather-related news or foreign affairs coverage. These arguments are flawed—legally, logically and often factually as well—and underscore the fine, content-based judgments that Bloomberg’s overreaching advocacy would compel.
- *Fourth*, in order to downplay the dislocation that its proposed definition would impose on other networks and on Comcast’s customers, Bloomberg presents new and flawed statistical analyses to try to show that Comcast frequently repositions networks, even in the 1–99 range. But the cherry-picked data on which Bloomberg relies to support its analyses serve only to underscore the extraordinary nature of the relocations that Bloomberg’s request would compel. The key facts are that between 2010 and 2011:
 - **45 percent** of Comcast’s lineups experienced *no channel changes* in the 1–99 range; and
 - **95 percent** of Comcast’s lineups experienced *less than one channel change on average*.

The changes cited by Bloomberg are attributable to 5 percent of Comcast’s headends, many of them serving only a few thousand customers, which in most cases were matched to the lineups of nearby headends or underwent upgrades to their physical plant. Bloomberg’s cherry-picked examples underscore the exceptional and extraordinary character of the lineup realignments that Bloomberg’s proposed definition of a “news neighborhood” would require. Any disruption occasioned by the changes that Bloomberg cites, affecting only 5 percent of Comcast’s lineups and an even smaller percentage of its subscribers, cannot be compared to the disruption that would result from Bloomberg’s interpretation of the Condition, which would affect 84 percent of Comcast’s lineups and the overwhelming majority of its subscribers.

4. For these reasons, and those stated in the Answer, Bloomberg’s program carriage complaint should be denied with prejudice.

I. BLOOMBERG’S NEW DEFINITION OF “SIGNIFICANT” IS INCONSISTENT WITH THE PLAIN LANGUAGE OF THE CONDITION

5. In its Complaint, Bloomberg alleged that four channels was a “significant” number of channels because a four-channel grouping was “probably caused by something other

than mere chance.”⁵ In keeping with this rationale, the only expert declaration Bloomberg attached to its Complaint was the declaration of economist Gregory Crawford, who calculated the probability that four-channel groupings would be found on Comcast’s channel lineups had those lineups been “determined randomly,”⁶ *i.e.*, by tossing darts at a channel listing. In its Answer, Comcast explained that Bloomberg’s definition of the term “significant” was plainly not the definition that the Commission adopted.⁷

6. Apparently recognizing that its original, statistical approach was unconvincing, Bloomberg now advances a new theory through five new (and previously undisclosed) putative experts. These experts argue that, in deciding whether a channel grouping constitutes a news “neighborhood,” the Bureau should eschew a “numerical” analysis in favor of an analysis that incorporates a broad range of factors relating to channel quality, including viewership, advertising revenues, and brand recognition.⁸ This new argument and the conclusions to which it leads (1) are irreconcilable with the text of the Condition; (2) if accepted, would create a Condition that would prove difficult, if not impossible, to administer; and (3) contradict the Transaction record.

⁵ Compl. ¶¶ 75 n.40, 76; Compl. Ex. F (Crawford Decl.) ¶¶ 50–53.

⁶ Compl. Ex. F (Crawford Decl.) ¶¶ 51–53 .

⁷ Among other things, this definition is not the definition that federal appellate courts generally assign to the term “significant”; nor is it the first, or even second, definition found in the dictionary to which the Complaint refers. Answer ¶¶ 50 & n.88, 51. Moreover, while the groupings in question may not have been “determined randomly,” they are longstanding, in some instances, predating Comcast’s ownership of the relevant cable systems. *Id.* ¶ 21 (citing Ex. 4 (Egan Decl.) ¶ 28).

⁸ Reply Ex. E (Mathison Decl.) ¶¶ 16-17 (“audience share,” “advertising revenue,” and “name recognition”); *accord* Reply Ex. B (Trautman Decl.) ¶ 17; Reply Ex. C (Goodfriend Decl.) ¶¶ 16–17; Reply Ex. D (Ferguson Decl.) ¶ 19; Reply Ex. F (Arnold Decl.) ¶¶ 18–19.

7. *First*, Bloomberg’s experts’ contention that a news “neighborhood” should be defined by “the *quality* of the channels” it contains, rather than their number and percentage,⁹ contradicts the text of the Condition. The Condition, of course, expressly defines a news “neighborhood” as a grouping containing a significant “*number or percentage*” of news channels. Thus, notwithstanding Bloomberg’s effort to distract with references to other factors, the touchstone of a “neighborhood” is and must be whether a grouping contains a significant *number or percentage* of news channels.

8. The conclusions reached by Bloomberg’s experts illustrate the conflict between the “qualitative” test they now apply and the numerical test that the Condition prescribes. Bloomberg’s experts admit that, under their new test, a grouping of only “two or three” channels may constitute a “neighborhood,” even if “many more” similarly themed channels may be found elsewhere.¹⁰ This absurd result cannot be reconciled with the language of the Condition and would result in a dramatic and unforeseen expansion of the Condition’s scope.

9. *Second*, the test espoused by the Reply would create an entirely unworkable Condition—an outcome that a textually faithful approach would avoid. Based on spikes in a network’s viewership or advertising revenues, a grouping that does not qualify as a “neighborhood” in one month could qualify as a neighborhood in the next. Thus, Comcast’s

⁹ See Reply Ex. E (Mathison Decl.) ¶ 16 (rejecting a “numerical analysis that . . . weigh[s] all news channels the same,” and declaring that “it is quality of the channels that defines a neighborhood”); *accord* Reply Ex. D (Ferguson Decl.) ¶ 19 (“The significance [of a channel grouping] is not influenced by a lower number if that same lower number represents the most important news channels.”).

¹⁰ *E.g.*, Reply Ex. F (Arnold Decl.) ¶ 20.

channel-relocation obligations would often be triggered by events in which Comcast had played no part.¹¹

10. *Third*, the arguments and conclusions of Bloomberg’s experts conflict with the record on which the Condition was based. The benchmark news “neighborhoods” identified during the merger proceeding were the “significant” groupings of 10–15 news channels (typically comprising 70 percent of news channels on the lineup) of Verizon FiOS, AT&T U-Verse, DirecTV, DISH and Time Warner Cable. The number and percentage of news channels contained in these benchmark “neighborhoods” distinguishes them from smaller, legacy channel groupings found on the lineups of Comcast and other cable operators—MVPDs that Bloomberg stated did not yet carry news neighborhoods.¹² Bloomberg itself referenced these benchmark news neighborhoods, and together with Comcast’s Master Channel Line-Up (“MCLU”) trial, they were the only benchmarks available to the Commission when it adopted the Condition and defined its scope.¹³ Bloomberg cannot, at this stage, invent an entirely new test for identifying news neighborhoods that bears no relationship to the benchmarks that it previously referenced.¹⁴

¹¹ In addition, under the qualitative test that Bloomberg’s experts advocate, the resolution of any complaint under the Condition would require the Bureau to consider not only evidence readily available to both parties—*i.e.*, the number and percentage of news channels in a putative “neighborhood”—but evidence on viewership and advertising revenues available only to third parties.

¹² See Answer ¶ 41 (citing Ex. 4 (Egan Decl.) ¶¶ 19–22, and Ex. 5 (Israel Decl.) Table A-III); see also Answer ¶¶ 54, 55.

¹³ See Answer Ex. 8 (Petition to Deny of Bloomberg L.P.) at 29.

¹⁴ See *New Hampshire*, 532 U.S. at 749; *In the Matter of Time Warner Cable*, 21 FCC Rcd at 9019–20 ¶ 13.

II. THE REPLY DEEPENS THE CONTRADICTION BETWEEN BLOOMBERG’S CURRENT AND PRIOR FCC ADVOCACY

11. Bloomberg’s prior advocacy regarding neighborhooding on Comcast systems was premised on the notion that Comcast and other cable operators did *not* “neighborhood” news channels.¹⁵ Bloomberg, therefore, urged the Commission to *require* Comcast to create news neighborhoods to prevent discrimination in favor of CNBC and against BTV.¹⁶

12. The Complaint, however, rests on a contradictory premise, *i.e.*, that news “neighborhoods” are pervasive on Comcast’s and all cable operators’ channel lineups,¹⁷ a premise that the Reply hardly attempts to reconcile with Bloomberg’s past advocacy.¹⁸ Instead, the Reply deepens the conflict between the two:

¹⁵ Answer Ex. 8 (Petition to Deny of Bloomberg L.P.) at 29.

¹⁶ Answer Ex. 12 (Dec. 10 *Ex Parte*) (stating that Bloomberg supported a condition requiring Comcast to create a business news neighborhood and would also “support a condition requiring the creation of a broader news neighborhood where news channels would be located on contiguous and adjacent channels positions”).

¹⁷ Complaint ¶ 75.

¹⁸ Bloomberg’s Reply cites only two passages from its prior advocacy, neither of which suggests that Comcast carries news “neighborhoods.” One passage notes that Comcast’s Master Channel Line-Up trials have not assigned BTV and Fox Business channel positions “in th[e] neighborhood” of CNBC’s initial channel position (channel 36). Reply at 39 n.128 (citing Dec. 8, 2010 *Ex Parte* at 8). That passage does not refer to other news channels or contend that CNBC, on its own, constitutes a news or business news “neighborhood.” The second passage, as support for Bloomberg’s claim that “Comcast . . . is already creating neighborhoods on its systems,” cites what Bloomberg characterizes as a sports “neighborhood” in the Washington, D.C. DMA. Reply at 39 & n.127 (citing Answer Ex. 8 (Petition to Deny of Bloomberg L.P.) at 63–64). Had Comcast’s systems carried news “neighborhoods,” Bloomberg would doubtless have cited those (not a putative sports “neighborhood”) to illustrate its point.

- Bloomberg previously stated that cable operators had yet to “neighborhood” news channels, but that Bloomberg “*expected* [them] to adopt neighborhooding *as they transition to digital technology*.”¹⁹
 - Bloomberg and its experts now claim that cable operators, such as Charter, Cox, and Cablevision, not only “neighborhood” news channels, but that they have done so since “*the early days of cable*”—*i.e.*, *decades* before the advent of digital technology.²⁰
 - Indeed, Bloomberg now asserts that “*cable operators, such as Charter, Cox, and Cablevision*, should logically be viewed as the ‘standard’ for the determination of a neighborhood.”²¹
13. And the Reply’s contradiction of Bloomberg’s prior advocacy does not end there.
- Bloomberg previously described “neighborhooding” news channels as an industry practice among MVPDs with “[m]odern distribution systems such as *DirectTV, Dish Network, FiOS, and U-Verse*.”²²
 - Bloomberg and its experts now claim that it “*makes no sense*” to define “neighborhooding” with reference to the practices of these four MVPDs, which Bloomberg itself singled out.²³ Instead, in an abrupt change of course, they have decided that legacy channel groupings found on the lineups of other cable operators define the industry standard.
14. Finally, Bloomberg’s prior advocacy before the Commission and in

Congressional testimony defined neighborhooding as “an industry practice of putting *all*

¹⁹ Answer Ex. 8 (Petition to Deny of Bloomberg L.P.) at 29 (emphases added). The only example that Bloomberg cited of this nascent trend among cable operators was Time Warner Cable’s 14-channel digital news neighborhood trial. *Id.* at 29 n.97.

²⁰ Reply Ex. E (Mathison Decl.) ¶ 11; *see also* Reply Ex. B (Trautman Decl.) ¶ 13 (practice of neighborhooding “has existed within the MVPD industry for many years”); Reply Ex. D (Ferguson Decl.) ¶ 9 (equating the term “neighborhooding,” which “is new to [him],” with the term “clustering by content,” a practice among cable operators in the late 1980s of “placing news and information services into clusters” (internal quotation marks omitted)).

²¹ Reply Ex. B (Trautman Decl.) ¶ 11; *see also* Reply Ex. C (Goodfriend Decl.) ¶ 24 (citing “Cablevision, Charter, and Cox” as MVPDs that organize their news channels into “neighborhoods”).

²² Answer Ex. 8 (Petition to Deny of Bloomberg L.P.) at 29.

²³ Reply Ex. B (Trautman Decl.) ¶ 11.

program channels in the same genre adjacent to one another in the channel line-up.”²⁴

Bloomberg and its putative experts now state that “*two or three*” channels may constitute a neighborhood, even if “many more” similarly themed channels can be found elsewhere.²⁵

15. In sum, the Reply and its attached declarations seek to have the Commission *apply* the Condition using a definition of the term “neighborhood” that is, in every respect, the diametric *opposite* of the definition that Bloomberg assigned to that term when it sought to convince the Commission to *adopt* the Condition. This about-face is fatal to Bloomberg’s claim for three reasons.

16. *First*, “[t]he doctrine of judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding.”²⁶ Here, Bloomberg has in essence sought to “gain[] an advantage by litigation on one theory,” and now “seek[s] an inconsistent advantage by pursuing an incompatible theory.”²⁷ The Commission has made clear that it “will not countenance such behavior by parties seeking relief from the Commission.”²⁸

²⁴ Answer Ex. 7 (Testimony of Gregory Babyak, Head of Government Relations, Bloomberg, Before the Senate Committee on Commerce, Science & Transportation, Mar. 25, 2010) (emphasis added).

²⁵ Reply Ex. F (Arnold Decl.) ¶ 20 (stating that the number of similarly themed channels required to constitute a neighborhood “can be quite small”); *cf.* Reply Ex. C (Goodfriend Decl.) ¶ 35 (“a neighborhood can consist of as few as three channels”); *see also id.* ¶ 12 (“a cluster of three channels can be a neighborhood”).

²⁶ *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (quoting 18 Moore’s Federal Practice § 134.30, at 134-62 (3d ed. 2000)) (internal quotation marks omitted).

²⁷ *New Hampshire*, 532 U.S. at 749 (quoting 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4477, at 782 (1981)).

²⁸ *In the Matter of Time Warner Cable*, 21 FCC Rcd at 9020 ¶ 13.

17. *Second*, Bloomberg’s revisionism should be rejected because it untethers the Condition from any potential Transaction-specific harm.²⁹ During the merger proceeding, Bloomberg stated that Comcast did not “neighborhood” news channels, but that, “[a]bsent the merger, BTV would have expected Comcast to neighborhood its channel line-up quickly to compete with other MVPDs.”³⁰ Bloomberg professed concern that the Transaction would create an incentive for Comcast to “implement neighborhooding (if at all) only in a manner that [would] continue to place BTV in a position removed from CNBC and other general news and business news channels.”³¹ To prevent such discrimination, Bloomberg urged the Commission to “condition the merger to require neighborhooding” or “[a]t the very least [to] prevent Comcast from leaving BTV and other independent competing programmers in disadvantageous channel positions when Comcast’s cable systems create genre-related neighborhoods.”³² The Commission adopted the latter, more “narrowly tailored,” condition.³³

18. By now describing news neighborhooding as a longstanding and pervasive practice by Comcast and the cable industry, and seeking to have the Commission compel reordering of longstanding, legacy lineups, Bloomberg severs any nexus between the Condition and potential harm arising from the Transaction. Bloomberg’s proposed definition would therefore create a Condition that, in tension with Section 303(r) of the Communications Act and

²⁹ *See* Answer ¶ 93.

³⁰ *See* Ex. 8 (Petition to Deny of Bloomberg L.P.) at 31.

³¹ *See id.* at 32–33.

³² *See id.* at 33.

³³ Order, 26 FCC Rcd at 4287 ¶ 122.

in violation of longstanding Commission policy, is not addressed to any Transaction-specific harm.³⁴

19. *Third*, Bloomberg may not simply sweep its prior advocacy under the rug because proper interpretation and application of the Condition *require* consideration of the record. Federal courts of appeals have recognized that the term “significant,” standing alone, is “inherently ambiguous” and requires consideration of the context and record on which a statute or administrative order was based.³⁵

20. Indeed, Bloomberg apparently agrees that the term “significant” is ambiguous, and attempts to cobble together a definition by cataloging cases in which courts have referred, in passing, to various percentages as “significant.”³⁶ Rather than constructing a definition of “significant” by reference to the factual records in *those* separate cases, however, the sensible approach is to define “significant” by reference to the factual record *in this case*. That is also what federal court precedent requires.

21. Here, the record establishes that a “significant” number or percentage must be less than “all.” The 10–15 channel news “neighborhoods” carried by Verizon FiOS, AT&T U-Verse, DISH, DirecTV and Time Warner did not include all their news channels. Nor, as explained in

³⁴ *Id.* at 4249 ¶ 25 (noting the Commission’s longstanding policy to “impose[] conditions to confirm specific benefits or remedy specific harms *likely to arise from transactions*” (emphasis added)).

³⁵ *See, e.g., Michigan v. EPA*, 213 F.3d 663, 678 (D.C. Cir. 2000) (noting the “ambiguity of the word ‘significant’” and considering context and legislative history); *Shandong Rongxin Import & Export Co. v. United States*, 774 F. Supp. 2d 1307, 1316 (Ct. Int’l Trade 2011) (holding that “[t]he term ‘significant’ in 19 U.S.C. § 1677b(c)(4) is not statutorily defined, and is inherently ambiguous”); Answer ¶¶ 51–52 (collecting cases).

³⁶ *See* Reply at 19–20 (citing, *inter alia*, *Doe v. Hillsboro Indep. Sch. Dist.*, 81 F.3d 1395, 1403 (5th Cir. 1996) (percentage of school custodial staff convicted of crimes), and *Greenpeace v. Nat’l Marine Fisheries Serv.*, 106 F. Supp. 2d 1066, 1076 (W.D. Wash. 2000) (percentage of fish caught in sea lions’ critical habitat)).

the Answer, did the news neighborhoods created by Comcast as part of its MCLU trial.

Critically, however, a “significant” number or percentage of news channels must be large enough to avoid sweeping in the small legacy channel groupings found on the lineups of Comcast and other cable operators—groupings that the record establishes are not news “neighborhoods.”

III. BLOOMBERG ARBITRARILY EXCLUDES DOZENS OF NEWS CHANNELS, UNDERSCORING THE SUBSTANTIAL FIRST AMENDMENT CONCERNS RAISED BY THE COMPLAINT

22. In a transparent attempt to inflate the ostensible “significance” of groupings of four news channels, Bloomberg and its new experts now arbitrarily exclude large numbers of networks from their analysis.³⁷ For example, Bloomberg excludes certain channels because they provide, in its view, insufficient levels of “reporting or analysis”; others because Bloomberg does not deem the documentaries they carry to be of sufficient import to count as “public affairs”; and still others because they address disfavored topics such as weather-related news or foreign affairs coverage.³⁸ Bloomberg’s analyses are not only erroneous, but applying Bloomberg’s framework would require the Bureau to make fine, content-based distinctions, impinging on Comcast’s editorial discretion and raising serious First Amendment concerns that the Bureau should—and can—avoid.

23. As Comcast explained, if HD news networks, sports news networks, and foreign-language news networks are counted, Comcast’s lineups carrying BTV in the Relevant DMAs carry an average of [REDACTED] news channels.³⁹ Even if these networks—which qualify as news

³⁷ See Reply at 21–29; see also Reply Ex. B (Trautman Decl.) ¶¶ 19–26; Reply Ex. C (Goodfriend Decl.) ¶¶ 25–34; Reply Ex. F (Arnold Decl.) ¶¶ 21–28.

³⁸ Reply at 23 (citing Ex. B (Trautman Decl.) ¶ 22; Ex. C (Goodfriend Decl.) ¶ 28; Ex. F (Arnold Decl.) ¶ 23); see also Reply at 25–26 (citing Ex. B (Trautman Decl.) ¶ 25; Ex. C (Goodfriend Decl.) ¶¶ 30–32; Ex. F (Arnold Decl.) ¶ 24).

³⁹ Answer ¶ 40; Answer Ex. 5 (Israel Decl.) ¶ 18.

channels under a literal reading of the Condition—are excluded from the analysis, those lineups carry an average of [REDACTED] news channels.⁴⁰ Thus, even under a highly conservative approach, a four-channel grouping would include only a small minority, not a “significant number or percentage,” of the news channels available on a typical Comcast headend.⁴¹

24. While Bloomberg scoffs at the notion that it would ever make sense to count separately SD and HD news networks,⁴² the Media Bureau recently affirmed that “SD and HD versions of the same network have different technical characteristics and content,” that consumers do “not consider[them] adequate substitutes,” and that “the HD version of a particular network [is] a distinct service from the SD version of the same network.”⁴³ The Media Bureau’s determinations highlight the differences between Comcast’s conservative and Bloomberg’s cavalier approach to identifying “news channels” and applying the Condition.

25. In order to defend its claim that a four-channel grouping includes a “significant number or percentage” of Comcast’s news channels, Bloomberg arbitrarily excludes scores of news networks from its analysis, including: (1) English-language international news networks;

⁴⁰ Answer ¶ 40; *see also* Answer Ex. 4 (Egan Decl.), Att. A. At various points in its Reply, Bloomberg asserts the Bureau should consider only the words of the Condition, and ignore the remainder of the Order, the Transaction record, and industry practice. In inventing reasons to exclude HD news networks, foreign-language news networks and sports news networks from their analysis, however, Bloomberg and its experts apparently have no qualms about resorting to arguments based on industry practice.

⁴¹ Answer ¶ 40.

⁴² Reply at 21–22 & n.53.

⁴³ *In the Matter of Verizon Telephone Cos. v. Madison Square Garden, L.P.*, Order, DA 11-1594, ¶¶ 4 & 29 n.150 (MB rel. Sep. 22, 2011); *see also In the Matter of AT&T Servs., Inc. v. Madison Square Garden, L.P.*, Order, DA 11-1594, ¶ 4 (MB rel. Sep. 22, 2011).

(2) weather-focused news networks; (3) public-affairs networks; and (4) multicast channels focused on news programming.⁴⁴

26. *First*, Bloomberg excludes 17 English-language networks focusing on international news from its analysis, although it does not—indeed, *could not*—dispute that these networks focus on “public affairs, business, or local news reporting and analysis” during the relevant hours.⁴⁵ In support, Bloomberg offers only the irrelevant point that the Commission regulates foreign ownership of broadcast media,⁴⁶ and does not explain how such regulation might justify excluding foreign-owned or originated news channels from a “neighborhooding” analysis.

27. *Second*, Bloomberg excludes weather-focused news channels from its analysis, although the language of the Condition, Commission precedent, and industry practice each support the conclusion that weather-focused news channels are news channels. Weather-focused news channels satisfy every dictionary definition of “news.” They provide “report[s] of recent events” and supply “previously unknown information.” The matters on which these channels report are matters of a kind that are “reported in a newspaper or news periodical or on a newscast” and are unquestionably “newsworthy.”⁴⁷ Bloomberg itself admits that weather “is a topic that is covered in local newscasts,”⁴⁸ and its experts admit that “weather programming does

⁴⁴ See Reply at 24–28.

⁴⁵ See *id.* at 28.

⁴⁶ Reply at 28 n.76 (citing 47 U.S.C. § 310(b), and *In re Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3947 ¶ 194 (1995)).

⁴⁷ Merriam-Webster’s Collegiate Dictionary 782 (10th ed. 1997) (definitions of “news”).

⁴⁸ Reply at 25.

play an important role in the overall news landscape.”⁴⁹ Commission precedent likewise makes clear that weather-focused news programming is news programming, whether presented as part of a newscast or on a stand-alone basis.⁵⁰ And Bloomberg’s claim that industry practice does not support counting weather-focused channels as news channels is simply inaccurate: virtually every MVPD that carries a bona fide news “neighborhood” includes weather-focused news channels in that neighborhood.⁵¹

28. *Third*, Bloomberg excludes many public affairs-focused networks from consideration because these networks, in Bloomberg’s view, do not provide adequate levels of “reporting or analysis.”⁵² This view, however, leads to the absurd result that serious documentaries, discussions, speeches, legislative sessions, and panels do not qualify as “public affairs” programming for purposes of the Condition.⁵³

29. Bloomberg’s view is also at odds with the long-standing television industry tradition of “public affairs” programming, as well as the Commission’s own regulations and

⁴⁹ Reply Ex. B (Trautman Decl.) ¶ 25; *see also* Supplemental Declaration of Michael Egan, September 26, 2011 (“Egan Supp. Decl.”) (attached as Ex. 1) ¶¶ 27, 30.

⁵⁰ Specifically, the Commission has recognized that “[n]ews includes reports dealing with current local, national and international events, including weather and stock market reports, and commentary, analysis, or sports news when they are [an] integral part of a news program.” *In the Matter of The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, MM Docket No. 83-670, 98 FCC 2d 1076, App. D § III.A ¶ 13 (1984) (citing FCC 1980 Annual Programming Report, Form #303-A, October 1980). As the Commission has placed “weather and stock market reports” on equal footing, it is unclear why Bloomberg insists that channels that focus on stock market reports should qualify as “news channels,” but that channels that focus on weather reports should not.

⁵¹ Ex. 1 (Egan Supp. Decl.) ¶ 31 (citing examples of news neighborhoods carried by DirecTV, AT&T U-Verse, Verizon FiOS, Insight Communications, and Time Warner Cable).

⁵² *See* Reply at 24, 28–29.

⁵³ *See, e.g., id.* at 28 (discussing Current TV); Ex. 1 (Egan Supp. Decl.) ¶¶ 22–26, 41–42.

communications on the subject, in which it has deemed public affairs programming to be programming responsive to issues concerning the public welfare and interest.⁵⁴ For example, Bloomberg categorically excludes public, educational and government (“PEG”) networks from its analysis even though the format of these channels is in many instances indistinguishable from the format of C-SPAN, which Bloomberg acknowledges does qualify as a news channel under the Commission’s definition.⁵⁵ In addition, Mr. Egan classified only nine of forty-six PEG channels that Comcast carries in the Relevant DMAs as news channels, a determination he based on a thorough review of the programming carried on those channels during the relevant time periods.⁵⁶ Bloomberg’s dismissal of these local news channels as a group without individualized review is inconsistent with the analysis that the Order requires.⁵⁷

30. *Fourth*, Bloomberg also excludes a host of other news networks from its analysis, citing anecdotal reports on individual programs that those networks carry.⁵⁸ Unlike Mr. Egan, however, none of Bloomberg’s many duplicative experts appears to have undertaken a systematic review of the programming carried by those networks. These experts’ unsupported

⁵⁴ Ex. 1 (Egan Supp. Decl.) ¶ 23. For example, public affairs programming “deal[s] with local, state, regional, national, or international issues or problems, including, but not limited to, talks, commentaries, discussions, speeches, editorials, political programs, documentaries, mini-documentaries, panels, roundtables and vignettes, and extended coverage of public events or proceedings, such as local council meetings, congressional hearings and the like.” *In the Matter of Revision of FCC Form 303, Application for Renewal of Broadcast Station License, and Certain Rules Relating Thereto*, Report and Order, Docket No. 20419, 59 FCC 2d 750, ¶ 47 (1976).

⁵⁵ Reply at 24, 66–67.

⁵⁶ See Answer Ex. 4 (Egan Decl.), Att. C at 3; Ex. 1 (Egan Supp. Decl.) ¶ 29.

⁵⁷ Cf. Answer Ex. 4 (Egan Decl.), Att. A; see Ex. 1 (Egan Supp. Decl.) ¶ 29.

⁵⁸ See Reply at 28–29; Reply Ex. C (Goodfriend Decl.) ¶ 34; Reply Ex. F (Arnold Decl.) ¶ 28.

opinions sharply contrast with Mr. Egan’s careful, network-by-network analysis, which demonstrates that a clear majority of the programming carried by each of these networks in the relevant time period does in fact qualify as news programming under the Commission’s definition.⁵⁹

31. Finally, Bloomberg asserts that “[m]ost of the specific multicast channels identified by Comcast . . . cannot reasonably be considered to be news channels.”⁶⁰ Unlike Mr. Egan, however, Bloomberg offers no meaningful evidence or comprehensive analysis to support its assertion.⁶¹

32. Moreover, the fine, content-based distinctions that Bloomberg draws in order to exclude various networks from its analysis underscore the serious First Amendment concerns implicated by Bloomberg’s construction of the Condition.⁶² An interpretation of the Condition that hews to its language and to the record on which it was based, by contrast, largely obviates the need for these fine distinctions. Under that interpretation—outlined by Comcast in the Answer and in this Surreply—only broad channel groupings such as those created by Comcast’s MCLU trial and those carried by Verizon FiOS, AT&T U-Verse, DISH, and DirecTV would

⁵⁹ Ex. 1 (Egan Supp. Decl.) ¶¶ 45–50.

⁶⁰ Reply at 26.

⁶¹ See Ex. 1 (Egan Supp. Decl.) ¶¶ 32–38.

⁶² Mr. Trautman acknowledges:

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 systems.

Reply Ex. B (Trautman Decl.) ¶ 19.

qualify as neighborhoods. As these groupings are readily recognizable, the Bureau could avoid delving into constitutionally problematic analyses of whether particular shows cover matters of sufficient import to qualify as “public affairs” and whether other shows provide adequate levels of “reporting” and “analysis.” Thus, the Bureau should favor Comcast’s approach and avoid Bloomberg’s, which would plainly implicate constitutional concerns should it infringe on Comcast’s editorial discretion by drawing content-based distinctions among different types of news networks.⁶³

IV. THE DATA UNDERLYING BLOOMBERG’S FLAWED CHANNEL MOVE ANALYSIS DEMONSTRATE HOW EXCEEDINGLY RARE SUCH DISLOCATION IS

33. Comcast’s Answer detailed how adopting Bloomberg’s interpretation of the Condition would visit substantial costs, burdens, and disruption on Comcast’s customers, other networks, and Comcast itself.⁶⁴ Bloomberg does not deny the disruption that its interpretation of the Condition would cause. Instead, it attempts to downplay that disruption with faulty analysis

⁶³ See *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994); *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition; Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket No. 07-29, 22 FCC Rcd 17791, 17840 ¶ 69 (2007). Contrary to Bloomberg’s assertions, Comcast does not claim that the Condition is facially unconstitutional. See Reply at 70 n.270 (arguing that Comcast is precluded from challenging any application of the Condition and asserting that the Commission’s regulation of MVPDs’ programming selection passes First Amendment scrutiny when such regulation ensures effective competition (citing *Cablevision Sys. Corp. v. FCC*, No. 10–1062, 2011 WL 2277217 (D.C. Cir. Jun. 10, 2011) (ruling on facial challenge to program access rules but declining to rule on as-applied challenge); *In the Matter of Revision of the Commission’s Program Carriage Rules*, MB Docket No. 11-131, Notice of Proposed Rulemaking, FCC 11-119 (Aug. 1, 2011) (general discussion of First Amendment issues that may arise in connection with enforcement of program carriage rules))).

⁶⁴ See Answer Section II.

and statistics concerning the frequency with which Comcast's cable systems voluntarily relocate networks in the 1–99 channel range.⁶⁵

34. Bloomberg's statistical analyses are skewed, however, and the channel relocations that Comcast's cable systems have voluntarily made cannot be compared to the widespread channel relocations that Bloomberg's interpretation of the Condition would require.

35. Bloomberg reports that, between 2010 and 2011, Comcast relocated 1,752 channels in the 1–99 range across its 650 headends in the Relevant DMAs—an average of 2.7 channels per headend.⁶⁶ But Bloomberg's analysis relies upon “cherry-picking” data that are not representative of Comcast's historical operations. The facts are that, between 2010 and 2011, (1) **45 percent** of Comcast's lineups *experienced no channel relocations in the 1–99 range*, and (2) **95 percent** of Comcast's lineups experienced *less than one channel relocation on average*.⁶⁷ The majority of changes cited by Bloomberg are attributable to 5 percent of Comcast's headends, many of them serving only a few thousand customers, which in most cases were matched to the lineups of nearby headends or underwent upgrades to their physical plant.⁶⁸

36. Any disruption occasioned by these changes, affecting only 5 percent of Comcast's lineups and an even smaller percentage of its subscribers, cannot be compared to the disruption that would result from Bloomberg's interpretation of the Condition, which would

⁶⁵ See Reply at 52–53. Bloomberg purports to base its statistics on 2010 Tribune Media Services data that Bloomberg refused to share with Comcast or the Commission during the Transaction proceeding, and that Bloomberg has not shared with Comcast or the Commission in this proceeding. See Answer Ex. 11 (October 22 *Ex Parte*) at 6.

⁶⁶ Reply at 52–53 (citing Ex. A (Crawford Decl.) ¶ 108).

⁶⁷ See Supplemental Declaration of Mark Israel, September 26, 2011 (“Israel Supp. Decl.”) (attached as Ex. 2) ¶ 8 & Table 2.

⁶⁸ Ex. 2 (Israel Supp. Decl.) ¶ 11 & Table 3.

require reordering 84 percent of Comcast's lineups and affect the overwhelming majority of its subscribers.⁶⁹ Comcast would be required not only to relocate the 1,819 independent news channels in the Relevant DMAs that are not included within a four-channel news grouping, but as explained in Comcast's Answer, each of those relocations would trigger a cascade of additional channel relocations.⁷⁰

37. The examples cited on pages 53–62 of the Reply are both atypical and uninformative: they represent headends that collectively serve less than one-half of one percent of Comcast's subscribers.⁷¹ The Quitman, Georgia headend cited by Bloomberg, for instance, serves only [REDACTED] subscribers, and the channel relocations that Bloomberg reports occurred when that headend was matched to the lineup of another headend in Tallahassee, Florida.⁷²

38. In sum, far from making Bloomberg's case, the statistics and examples that it reports do just the opposite by underscoring the infrequency with which Comcast relocates channels in the 1–99 range.

39. Bloomberg also attempts to downplay the burdens and disruption occasioned by its interpretation of the Condition through misdirection—by dwelling on matters that Comcast had indicated constituted only a small element of the overall burden and disruption, while largely ignoring more important elements.⁷³ Thus, Bloomberg submits an entire expert report to address

⁶⁹ See Answer Ex. 4 (Egan Decl.) ¶ 36 (identifying 507 of 602 such headends).

⁷⁰ See *id.* ¶ 36; see also Answer Ex. 3 (Kreiling Decl.) ¶¶ 10–12.

⁷¹ Ex. 2 (Israel Supp. Decl.) Table 3.

⁷² *Id.*

⁷³ See Reply Section IV.

physical engineering costs, costs that Comcast's own witness stated were low when compared to other costs that broad channel realignments would entail.⁷⁴

40. At the same time, Bloomberg fails to address key concerns, such as the impact that the channel realignments resulting from its proposed definition would have on Comcast's ability to maintain customer satisfaction and service quality. Only one of Bloomberg's seven experts, Susan Arnold, addresses customer education and customer care, but she does so from the perspective of satellite providers, not a cable operator.⁷⁵ Ms. Arnold has primarily worked at DISH, a satellite provider offering a single, nationwide lineup, a far different experience from the cable industry, where operators offer many hundreds of channel lineups.⁷⁶

41. Moreover, in her role at DISH, Ms. Arnold was responsible for pay per view, international, international sports, and interactive TV products.⁷⁷ Ms. Arnold reasons that, because DISH received a manageable number of customer calls following relocations of international channels, Comcast would receive a similarly manageable number of calls if it were required to relocate popular networks, such as ESPN and Discovery, that are now adjacent to four-news-channel groupings in the 1–99 range.⁷⁸ This reasoning makes no sense, and should be disregarded by the Bureau.

⁷⁴ See Reply Ex. G (Goldberg Decl.); see also Answer Ex. 3 (Kreiling Decl.) ¶ 20.

⁷⁵ See Reply Ex. F (Arnold Decl.) ¶ 29. Ms. Arnold's lack of pertinent experience makes it clear that she and Bloomberg's other purported experts should be subject to cross-examination before any reliance is placed upon their testimony.

⁷⁶ See Reply Ex. F (Arnold Decl.) ¶¶ 3–8.

⁷⁷ See *id.* ¶¶ 3–8.

⁷⁸ See *id.* ¶ 29.

42. Third, through a series of speculative legal and factual assertions, Bloomberg minimizes or ignores the ongoing instability that would result for Comcast’s customers if Bloomberg’s interpretation of the Condition were adopted. Bloomberg speculates, for instance, that the C-SPAN networks may not qualify as “independent” news channels because they may qualify as Comcast “affiliates,”⁷⁹ a novel definition of “affiliation” never endorsed by the Commission. Bloomberg also speculates that no independent news channels will be launched by Comcast over the next seven years.⁸⁰ This speculation is entirely baseless, as Comcast is already in discussions with or has plans to launch within the next two years other independent news channels, [REDACTED]

[REDACTED]

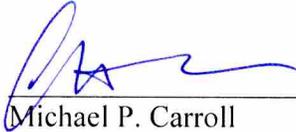
⁷⁹ Reply at 66–67.

⁸⁰ *Id.* at 67–68.

CONCLUSION

For the foregoing reasons, and those stated in the Answer, Bloomberg's program carriage complaint should be denied with prejudice.

Respectfully submitted,



Michael P. Carroll
Arthur J. Burke
Rajesh S. James
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

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

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

David H. Solomon
J. Wade Lindsay
WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W., Suite 700
Washington, DC 20037
(202) 783-4141

Attorneys for Comcast Cable Communications, LLC

September 27, 2011

VERIFICATION

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

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

September 27, 2011



Arthur J. Burke

CERTIFICATE OF SERVICE

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

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

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

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

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



Arthur J. Burke

Exhibit 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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

**SUPPLEMENTAL DECLARATION OF MICHAEL EGAN
ON BEHALF OF COMCAST CABLE COMMUNICATIONS, LLC**

1. My name is Michael Egan. I previously submitted a declaration dated July 27, 2011, which was included in Comcast’s Answer of the same date (“Egan Declaration” or the “Declaration”), assessing from a cable operator and programming expert’s perspective (1) the claim made by Bloomberg L.P. (“Bloomberg”), in its Complaint filed June 13, 2011, that Comcast Cable Communications, LLC (“Comcast”) now extensively groups news channels into “news neighborhoods” in the markets in which it operates cable systems in the Top 35 TV HH DMAs,¹ (2) whether Bloomberg’s definition of a “news neighborhood” as at least four news channels within five channels represents a reasonable understanding of what would constitute a “news neighborhood” from a customer or industry standpoint, and (3) the impact of the repositioning of Bloomberg Television (“BTV”) requested by Bloomberg, as well as the

¹ Comcast operates in 26 of the top 35 DMAs.

accompanying possible repositionings of other independent news channels, on Comcast, its customers, and other networks distributed on the affected cable systems.

2. I have been asked by counsel for Comcast to review the Reply of Bloomberg dated August 30, 2011 to the Answer of Comcast (“Reply”); the Reply Declaration of Gregory S. Crawford; and the Declarations of James Trautman, David Goodfriend, Douglas Ferguson, Don Mathison, and Susan Arnold with regard to the claims made therein that (1) the Comcast channel groupings identified by Bloomberg qualify as “news neighborhoods” due to the “significance” of the number of news channels they contain and the percentage those represent of total news channels on the lineups, that (2) Comcast overstates the average number of total news channels carried on its headends, and that (3) Comcast’s news channel groupings identified by Bloomberg are consistent with industry practice.

3. After having reviewed these documents in detail and carefully considered the information presented within them, I conclude as follows:

- 1) Neither the number nor the percentage of news channels within the Comcast news channel groupings identified by Bloomberg reaches the threshold that transforms a group into a neighborhood. As a result, both the number and percentage fall far short of being “significant.”
- 2) Comcast’s categorizations of channels into news and non-news are the product of an informed and thorough analysis of each channel’s programming performed by industry experts utilizing extensive resources, and the resulting average number of news channels carried is accurate. Conversely, Bloomberg’s categorizations in the Complaint were not done by industry experts and failed to recognize numerous news channels carried by Comcast and virtually all other MVPDs. In addressing these omissions after the fact, the Reply and its supporting declarations fail to provide any proof that these channels should now be excluded from classification as news channels. Moreover, the Reply is misleading and inaccurate in its discussion of exactly which news channels Comcast included in its neighborhooding analyses.
- 3) The Reply’s argument that (a) equates the long-standing groups of four news channels within five channel locations found in cable systems of virtually all MSOs with (b) the much more recently created news groups consisting of 10 to 15 news channels deployed widely by AT&T U-Verse, Verizon FiOS, DirecTV, and Insight Communications is patently illogical. Moreover, the subsequent

conclusion that each is qualified to be considered a news neighborhood is implausible in the context of the number of news channels available in 2011, the *Comcast-NBCUniversal Order* (the “Order”), and this FCC proceeding.

4. Furthermore, I remain confident in the original conclusions stated in paragraph 7 of my Declaration.

I. Reply, Section III. A. 1 (“The Neighborhoods Identified by Bloomberg Have a Significant Number of News Channels”).

5. The Reply contains a grab bag of unsupported claims and disparate facts about the meaning of “significant,” each of which is unsubstantial by itself, and as a whole is nothing more than a collection of parts that does not address the essence of what an MVPD’s news neighborhood actually is *today*, in 2011. As a result, the Reply provides no evidence that four is a significant number of channels or that a group of four news channels is a news neighborhood.²

6. To provide relevant and productive insight, “significant” should be interpreted within the context of the unique meaning of a news “neighborhood”, in other words, the essence of a news neighborhood. A “significant” number of news channels is a number that reaches the threshold necessary to transform a news group into a news “neighborhood.” By logical extension, not all groups are neighborhoods.

7. The essence of a neighborhood can be seen in the MVPD’s design intent, i.e., the MVPD’s objectives in creating and deploying it. Neighborhoods are intended to enhance the viewing experience by more easily allowing the user to remember, when faced with hundreds of channel choices, where to go “on the dial” for the channels comprising the genre he or she is seeking at that moment, and then once there, using the remote control, to easily “surf” within

² Just one example of the Reply’s unsubstantial claims can be summarized as follows: since deliberate action placed the four news channels substantially adjacent in these lineups, they must today be a news neighborhood. In this myopic theory, the *only* criterion for a neighborhood is whether or not the channels were randomly placed. No other facts are required, and certainly no informed analysis is permitted.

them *at that one location* without having to search elsewhere on the dial. If the viewer must determine and turn to multiple additional locations for the majority of the genre's channels available on the system, the so-called neighborhood is not doing its job. In addition, by having blocks of nearly consecutive channels programmed by genres, the neighborhood is meant to improve the customer communication abilities of the distributor by allowing it to portray and describe the programming offered in its service in simple and easily understood images and messages.³ Again, the objective can only be met if the bulk of the genre is located together on the lineup (see the examples of MVPDs' typical marketing materials taking advantage of neighborhoods in Exhibit D of my Declaration).

8. To be significant, four channels must reach the quantitative threshold that achieves these objectives. When a lineup in the 1990s made available to its viewers a total of only six or eight news channels, a news group of four or five of them *may* have reached that transforming threshold. However, in 2011, in a system lineup delivering a total of 15 news channels, that very same group clearly falls far short. A common sense consideration of the factors above suggests that the number must be a substantial majority of the 15.

II. Reply, Section III. A. 2 (“The Neighborhoods Identified by Bloomberg Have a Significant Percentage of News Channels”)

9. This section of the Reply first repeats Bloomberg's inaccurate claim that Comcast's four news channel groups contain one-third or more of all SD news channels on the lineups. As shown in the Answer and further detailed herein, Bloomberg mistakenly

³ Note that the declarants employed by Bloomberg for the Reply generally endorsed one or both of these neighborhood objectives as stated in paragraph 12 of my Declaration. *See* Reply Ex. B (Trautman Decl.) ¶ 8; Reply Ex. D (Ferguson Decl.) ¶ 9; Reply Ex. E (Mathison Decl.) ¶ 11; Reply Ex. F (Arnold Decl.) ¶ 12.

undercounted the average number of news channels carried on Comcast's lineups, recognizing only 11.03 when the total is (conservatively) [REDACTED].

10. The Reply then contains a list of quotes taken from other legal proceedings each of which contains the words "significant percentage" and "majority" in an effort to demonstrate that they are not synonymous. The quotes are presented without context and seemingly have no relevance to this situation and this industry. The quotes provide no insight into whether or not four channels is a significant percentage of [REDACTED] in this context.

11. Once again, Bloomberg fails to confront the fundamental question. Does that percentage (26% of news channels) reach a threshold that transforms a group into a neighborhood, thereby achieving the MVPD's objectives constituting the essence of a neighborhood? Common sense alone suggests it falls far short. However and importantly, as delineated in my Declaration and the Answer, a thorough analysis of the news grouping practices of nearly 100% of the lineups in the Relevant Markets revealed that a clear standard of 60–70% is now in practice, creating a bright line of separation between those systems deploying news neighborhoods and all others.

III. Reply, Section III. A. 3 ("Comcast Vastly Overstates the Number of News Channels on Its Headends")

12. As detailed in the "Methodology" section of my Declaration, at paragraphs 8–10 and Exhibit A, that Declaration was based on the collection and categorization of a large and comprehensive set of data for *all* 1,072 channel lineups of the Top 14 MVPDs⁴ in the Relevant Markets (representing 96% of all multichannel subscribers in the markets), including, for each and every one of the unique 5,297 networks carried, the classification of the programming genre

⁴ The Top 14 MVPDs were defined in my Declaration as Comcast and the other nine of the Top 10 cable MSOs, as well as the two DBS services, DISH and DirecTV, and the two large regional phone companies, Verizon and AT&T U-Verse.

aired between 6 am and 4 pm ET (the “Relevant Time Period”) into “News” or “Not News.” The categorization work was performed by three cable industry programming and operations executives with a combined total of more than 75 years of successful experience in the business. They employed extensive research of network websites, Tribune Media Services (“TMS”), as well as TV Guide, tvguide.com, titantv.com, zaptoit.com, and other sources, and included an analysis of every individual hour of programming for two consecutive weeks where necessary. Furthermore, in some cases, video excerpts of shows were viewed.

13. If a channel offered additional genres beyond news, a count of the hours of programming of each genre aired during the Relevant Time Period was done. If the majority of airtime was news, public affairs, and business, the channel was characterized as a news channel. Each news network was further categorized by resolution (HD or SD), language, and owner. If it was carried by Comcast, a news network was also categorized by whether or not it was independently owned according to the guidelines in the Order.

14. Once that database was created, expert analyses were performed in order to identify the number of news channels carried, on average, by each MVPD as well as the news channel grouping practices being deployed by each one of the Top 14 MVPDs in these markets. Thereafter, with those comprehensive information and analyses at my disposal, in my Declaration, I was able to describe the practices of all 14 MVPDs, identify the grouping behavior separating five to six of them from the others, and explain how Comcast’s practice in this regard fit within the spectrum of the marketplace.

15. In contrast, Bloomberg’s Complaint contained data solely for Comcast’s cable systems. The categorizations of networks by programming genre, resolution, and language were not done by a cable industry professional, but rather by an outside economist, Mr. Gregory

Crawford. Unfortunately, Professor Crawford did not recognize many news networks, and simply left them out. Professor Crawford and the Complaint did not attempt to discern the news grouping practices of the other MVPDs in the marketplace. Unsurprisingly, the analyses of the data done by Professor Crawford evidenced at times a material lack of the knowledge of the history and workings of the industry that is necessary to interpret the information. *See, e.g.*, Answer Ex. 4 (Egan Decl.) ¶ 27.

16. Section III. A. 3 of the Reply is misleading in its discussion of exactly which news channels Comcast included in its neighborhooding analyses. It also attempts to defend the errors of omission Bloomberg committed in the Complaint in its identification and counting of news channels. In doing both, Bloomberg aspires to substantiate its gross undercounting of the number of news channels carried in the average Comcast headend (11.03 versus an actual total of [REDACTED] and the resulting errors in its analysis and conclusions regarding the alleged existence of news neighborhoods within the Comcast lineups.

17. First, the Reply wrongly implies that Comcast included HD news networks, sports news networks, and foreign language news networks in its calculation of the average number of news channels on its lineups and in its neighborhooding analyses (*see* Reply at 21–23 & n.53). In fact, Comcast forthrightly stated in paragraph 40 of the Answer that if one excludes the HD news networks, the sports news networks, and the foreign language news networks, then its lineups carry, on average, [REDACTED] news channels, and if one includes them, the lineups average [REDACTED] news channels. Moreover, as stated in Exhibit A to my Declaration, in order to be conservative, all of the analyses of news channel groupings for neighborhooding purposes in my

declaration, Mark Israel's declaration,⁵ and Comcast's Answer *excluded these three types of networks for Comcast and the balance of the Top 14 MVPDs.*

18. Notably, footnote 62 is wrong in claiming that Mr. Israel and I included Spanish-language multicast WNVTDT8 in the neighborhooding analyses. Exhibit B to my Declaration clearly shows WNVTDT8 categorized as Spanish language, so it would *not* have been included in the neighborhooding analyses. Again, only English language foreign news networks were included for neighborhooding purposes.

19. Second, the Reply attempts to defend its failure to include in its calculations and arguments dozens of news channels carried on Comcast headends and those of most other MVPDs. As discussed above, these mistakes may well be the direct result of Bloomberg's decision to dedicate inadequate and inexpert resources to the task of categorizing channels into news and non-news, a task that requires an investment of significant time and expert knowledge to accomplish accurately.

20. As explained in Exhibit A to my Declaration, each of the channels I categorized as a news channel in terms of its programming genre was one that met the programming criteria clearly delineated in footnote 292, subsection (iii), of section 122 of the Order's language and was a network "whose programming is focused on public affairs, business, or local news reporting and analysis during the hours from 6:00 am through 4:00 pm in the U.S. Eastern Time Zone."

21. Bloomberg takes a different approach. In footnote 66 of the Reply, it attempts a tortured and erroneous interpretation that "'reporting or [sic] analysis'" in the Order's language "*clearly modifies 'local news,' 'business,' and 'public affairs.'*" According to this unusual

⁵ Answer Ex. 5 (Israel Decl.).

parsing of the Order's sentence, the "reporting and analysis" requirement applies to *each of* "public affairs," "business," and "local news" rather than just the phrase "local news," which it follows in the sentence. Ignoring the contradiction within its own sentence, Bloomberg argues, "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."⁶ Moreover, the Reply allows only a very limited, literal meaning for "reporting and analysis." With this convoluted reasoning, the Reply excludes dozens of channels from its news channel classifications and its calculation of the average number of news channels per Comcast headend.

22. In fact, most of television's traditional public affairs programming (such as speeches, legislative sessions, meetings, documentaries, discussions, and panels to name just a few examples) would seem not to qualify under one leg or the other of this theory since it doesn't consist of "reporting and analysis" as strictly interpreted by Bloomberg. Surprisingly, this position is offered in the Reply in spite of the fact that Bloomberg's Complaint itself classified as news channels CSPAN, CSPAN2, CSPAN3, and five state public affairs networks that consist of a mix of legislative sessions, hearings, panels, talk shows, interviews, and the like.

23. Not only does Bloomberg misquote the Order and interpret its grammar incorrectly, its position regarding what constitutes "public affairs" programming flies in the face of long-standing television industry practice and tradition in producing and distributing public affairs programming as well as the FCC's own regulations and communications on the subject, especially in the broadcast licensing arena.

⁶ Reply at 24 n.66.

24. Throughout my 36 years of experience working in broadcasting and cable, beginning as a high school teacher of Broadcasting and radio station manager, continuing through my work as a university TV/Radio/Film instructor and broadcast TV station news photographer, and during my many years as a cable television programming executive, the term “public affairs programming” typically has been used to refer to all forms of non-entertainment programming responsive to issues concerning the public welfare and interest. It has included, for example, talk and interview shows; documentaries; and school, town board, and committee meetings. I don’t recall ever having heard of an otherwise-qualified channel or program being excluded from characterization as public affairs because it did not consist of “reporting and analysis.”

25. Quoting from a textbook I used when teaching a high school class in Broadcasting in 1975, “Public Affairs and service programs most clearly demonstrate the use of broadcasting to serve the public interest. In a variety of forms, these programs provide information and understanding about the real world in which we live; they report information and news about activities . . . ; they present direct coverage of important events; they provide a public platform for speeches, press conferences, and discussions of public issues, they dramatize through documentary techniques, historical events and current social and political problems.”⁷ Over the intervening years, entire cable channels evolved from these public affairs concepts and program types. The wide range of formats commonly used to deliver public affairs programming is illustrated in the multiplicity of show types used by CSPAN, whose acronym stands for Cable-Satellite *Public Affairs* Network.

⁷ Giraud Chester, Garnet R. Garrion, Edgar E. Willis, *Television and Radio* (Englewood Cliffs, N.J.: Prentice Hall, Inc., 4th ed. 1971), 63.

26. In its role of ensuring that broadcasters operate in the public interest, the FCC has spoken about news and public affairs programming many times over the years. For example, it said public affairs programming includes programming “dealing with local, state, regional, national, or international issues or problems, including, but not limited to, talks, commentaries, discussions, speeches, editorials, political programs, documentaries, mini-documentaries, panels, roundtables and vignettes, and extended coverage of public events or proceedings, such as local council meetings, congressional hearings and the like.”⁸

27. During my categorization of channels, weather channels were deemed to be news as they fit within these criteria, and weather reports, specifically, have been referred to as news by the FCC in the past. For example, it wrote, “News includes reports dealing with current local, national and international events, including weather and stock market reports, and commentary, analysis, or sports news when they are integral part of a news program.”⁹ Notably, in this passage, the FCC equates weather and stock market reports in categorizing them each as news.

28. Due to their misinterpretation of the actuality of public affairs and news programming, Bloomberg and some of its declarants make erroneous claims when questioning news channel categorizations contained in Comcast’s Answer and my Declaration.

A. Access Channels, Including Public, Educational, and Government (“PEG”) Access Channels

29. Unlike Bloomberg’s Reply which dismissed PEG channels as a group, I examined each access channel on its own merits. Those labeled “Government Access” are obviously

⁸ See *Revision of Programming & Commercialization Policies*, Report and Order, 98 FCC 2d 1076 (1984) (citing FCC 1980 Annual Programming Report, Form #303-A, October 1980).

⁹ See *Revision of Programming & Commercialization Policies*, Report and Order, 98 FCC 2d 1076 (1984).

presenting public affairs programming (often in similar fashion to CSPAN) as they televise municipal information, meetings, and other coverage of issues of local, public importance. In addition, there were 46 separate Comcast channels labeled by TMS as “Public, Educational, Government.” The programming on each of these was analyzed, and only those nine on which the majority of airtime in the Relevant Time Period was filled with government access programming were categorized as news channels. I did not classify *any* of the many other channels labeled Educational Access or Public Access as news channels.

B. Weather

30. In light of the events of even just the last 60 days, it is difficult to fathom how Bloomberg or its experts could plausibly classify weather networks as non-news channels. Yet it does on page 25 when, referring to The Weather Channel, it states, “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.” Coverage of hurricanes, tropical storms, flooding, weeks on end of 100+ degree weather, and droughts, all resulting in destruction, injury, and loss of life and property, certainly fits the description of covering issues of public importance that concern the public welfare. Moreover, as noted above, weather was specifically identified as news programming by the FCC.

31. On page 25, the Reply states “[t]he Weather Channel is not considered to be a news channel by those within the MVPD industry,” an obvious mistake since The Weather Channel is included in the news neighborhoods of virtually every MVPD deploying them, including, but not limited to, DirecTV, DISH, AT&T U-Verse, Verizon, Insight, and Time Warner Cable.

C. Multicast Stations

32. On page 26, the Reply states, “Most of the specific multicast channels identified by Comcast, however, cannot reasonably be considered to be news channels.” Notably, no meaningful evidence or comprehensive analysis of the Relevant Time Period is presented to support this sweeping statement regarding the 84 multicasts we categorized as news networks. Instead, a total of four channels with extremely limited carriage within Comcast are individually identified and questioned, one of which, KCRT, is actually a cable-originated channel mistakenly identified as a multicast by Bloomberg. Regarding the other three named, WNEODT2 does indeed carry arts programming as the Reply states, but that genre airs only until 9am ET. After that, through 4pm, the content is dominated by public affairs, including state legislative hearings and debates, interviews, and Supreme Court sessions. After our review in June and July, WNCNDT3 and WTVJDT2 changed their programming genres due to the demise of the NBC Weather Plus feed they had carried. These changes underscore the problematic dynamic pointed out in my Declaration (paragraph 42): many channels will change their programming content—and their qualifications as news or not-news channels—on an ongoing basis.

33. In contrast to Bloomberg’s minimal, cherry-picked, and incomplete approach, our review of the multicasts was extensive and thorough. We began with over 1700 broadcast TV stations carried by the Top 14 MVPDs in the Relevant Markets. After review of each call sign, we determined that the list contained more than 450 multicast stations. We then reviewed the websites and programming for each station to determine whether or not its programming was, in the majority of the Relevant Time Period, public affairs, business, or local news, examining TV schedules for all of the time period for two consecutive weeks when necessary. We also categorized each station by resolution, language, owner, and if carried by Comcast, whether or

not it was independent. We found that only 84 qualified as news channels, and of those, 82 were included in the neighborhooding analyses for all MVPDs, while the other two were excluded because they were not delivered in the English language (all were SD resolution). Of those 82, we included the 65 multicast stations carried by Comcast in its neighborhooding analysis.

34. The WORLD TV network was launched nationally in 2007 by PBS, and it is now distributed by WGBH, WNET, and American Public Television in Association with PBS and the National Educational Telecommunications Association. WORLD “seeks to target a broad range of people interested in exploring the issues of the day.”¹⁰ The network is distributed on many digital multicast stations carried by Comcast and the other MVPDs. On page 27, referring to these multicast stations during their carriage of WORLD, the Reply claims that they do “not focus on public affairs, business, or local news reporting or analysis between 6:00 am and 4:00 pm. Rather, most of their programming during this time period consists of nature and outdoors programming, historical documentaries, and other non-news programming.” However, no facts are provided to prove the statement; in fact, no supporting case is made at all.

35. In sharp contrast, as explained in Attachment A to my Declaration, we examined each show on the WORLD network schedule in the Relevant Time Period for two consecutive weeks, from June 19 through July 2, 2011 (a total of 140 hours), finding that 59.5 hours (43%) of the programming was public affairs, 12.5 hours (9%) was news, and 2.0 hours (1%) was business. The total for these news categories was 74 hours (53%) of the Relevant Time Period, and so it was properly classified as a news channel. Attachment A to this Supplemental Declaration is the WORLD schedule for those weeks with each individual program color-coded

¹⁰ See <http://www.worldcompass.org/content/about>.

to indicate whether it is news, public affairs, business (all of which are “news”), or other (“non-news”).

36. As also explained in Attachment A to my declaration, we performed a similar analysis on another public affairs network with carriage on multicast TV stations, MHz Worldview, for the weeks of June 26 and July 3, 2011. Its English-language news and public affairs programming accounted for 45% and 25%, respectively, of its airtime in the Relevant Time Period, the combined total of 70% qualifying those multicasts as news networks. Included as Attachment B is the schedule for MHz Worldview for those weeks with its individual programs likewise color-coded by genre.

37. With respect to multicast stations, Bloomberg once again attempts to exclude from news categorization all channels carrying weather programming in the majority of the time period. For the reasons explained above, this content qualifies as news programming under the Order and these multicasts are news channels.

38. Without explaining its seemingly bizarre point of view, on page 28 the Reply questions whether locally oriented multicasts carrying news programming should be categorized as such, and also raises an objection to our inclusion of U.S. multicast stations that program foreign-owned news programming. We evaluated and categorized these multicasts by the same rules we used for all other channels, including the English language requirement for inclusion in neighborhood analyses.

D. Current TV

39. On page 28, the Reply claims that this is not a news channel, echoed by several of its declarants. However, they are mistaken.

40. It is uncontested that Current TV airs news programming in the news, talk and commentary format during the Relevant Time Period via the 60-minute show, *Countdown With*

Keith Olbermann, which airs three times most days at 7 am, 12 pm, and again at 3 pm. For much of the balance of the time period, Current TV airs documentaries. Not all address issues in the public interest and welfare, but most do, placing them squarely within the venerable tradition of TV journalism. Without doubt, those particular documentaries qualify as news programming in the public affairs category, and I classified only those as such.

41. In large part, these documentaries are from *Vanguard*, which Current TV describes as “a no-limits documentary series whose award-winning correspondents put themselves in extraordinary situations to immerse viewers in global issues that have a large social significance.”¹¹ The Reply excludes these documentaries from news genre qualification stating, “While this programming may be interesting and worthwhile, the channel’s focus is not on reporting or analysis.” Although Bloomberg and its declarants fail to recognize this news programming, the industry has. *Vanguard* has received a number of industry awards honoring achievements in news and public affairs, including the 2010 Television Academy Honor (recognizing achievements in programming relating to issues of concern to our society), the prestigious Alfred I. duPont-Columbia Award (for broadcast journalism¹²), and the 2009 Livingston Award (“the largest all-media, general reporting prizes in American journalism”¹³), and was nominated four times for a news and documentary Emmy®.

42. Just a few examples of public affairs documentaries on Current TV during the weeks we originally examined were:

¹¹ See <http://current.com/shows/vanguard/about>.

¹² See <http://www.journalism.columbia.edu/page/165-alfred-i-dupont-columbia-university-awards/166>.

¹³ <http://www.livawards.org/about>.

- *Gateway to Heroin*, which examines the dramatic spike in drug abuse over the last decade in the U.S.
- *Doctors Without Borders*, in which Current TV followed the work of this international organization for four months.
- *American Jihadi*, which traces the journey of a small-town kid from Alabama to Somalia, where as part of Al-Shabaab he is now recruiting young Muslims from the West to wage jihad overseas.

43. Our analysis of every program on the Current TV schedule from June 21 through July 4, 2011 found that 59% of the programming in the Relevant Time Period was news or public affairs (the breakdown was 25% news and 34% public affairs). Included as Attachment C is the schedule for Current TV for those weeks with its individual programs color-coded by genre.

44. Finally, in early August, Current TV made its position and ambition as a news network very clear by naming David Bohrman, CNN's former Washington bureau chief and producer of the network's election coverage, as its new President.¹⁴

E. Miscellaneous Channels

45. The Reply questions my news categorization of each of the following.

46. CN 100 – According to its website, this cable-originated network carried in Chicago begins its schedule at noon local time (1 pm ET). The majority of the next three hours is dedicated to public affairs programming.

47. The Community Bulletin Board – This is the most basic of public affairs programming, informing viewers of important local events and information. The topics and occasions are endless, but three typical examples are: meetings of municipal boards and

¹⁴ See

http://www.politico.com/blogs/onmedia/0811/David_Bohrman_exCNN_named_Current_TV_President.html and <http://www.adweek.com/news/television/joel-hyatt-natural-thing-reclaim-ceo-title-134090>.

agencies, dates and times of 9/11 commemorative ceremonies, and bulletins explaining the importance and availability of flu shots for senior citizens.

48. Tango Traffic – Carried in the Philadelphia area, the channel is dedicated to local traffic and weather. With its alerts to hazardous conditions and traffic delays, the channel contributes to improving the public health and welfare of residents travelling to work, school, and other activities.

49. Link TV – Bloomberg names three genre characterizations that the network’s website uses to describe its programs: *news and current affairs*, *movies*, and *music*. However, the Link TV website actually uses *four* color keys to specify the genres of its programs. Bloomberg failed to mention the fourth category of Link TV programming: *documentaries*. (See Attachment D.) Supporting the accuracy of our original categorization of this as a news channel, an additional examination of its programming schedule for the two weeks from August 20 through September 2, 2011 determined that of the 140 hours in the Relevant Time Period, 83.5 hours (60%) comprised news and public affairs programming.

50. City of Houston Municipal Channel – The Reply names three non-news shows that are purportedly carried on this channel (the declarations referenced do not seem to support the Reply). Regardless of whether they actually are or were at some time, these shows do not make up the majority of the channel’s airtime in the Relevant Time Period. Instead, the airtime is actually composed of city council meetings, commissioner’s court, committee hearings, national and local business shows, “Latina Voices,” Houston’s Historical Committee meetings, and many other similar shows and municipal agency sessions.

51. In the conclusion of this section, on pages 29 to 31, the Reply backtracks from two of the Complaint’s errors in categorization of channels into news and non-news. First, in

footnote 80, it adds to its news channel analysis “28 multicast streams identified by Comcast” and included in its news neighborhood analyses. Second, on page 30, taking what it now calls “a broader view,” Bloomberg includes The Weather Channel in its consideration of news channels in news neighborhoods.

52. Professor Crawford points out in his Reply Declaration¹⁵ that each of these error corrections separately increases his count of the average number of news channels in the pertinent Comcast headends. While the Complaint claimed an average of 11.03 news channels, with both the 28 stations and The Weather Channel included, Professor Crawford would count a new average of 12.45, an increase of nearly 1.5 news channels or 13%. Unfortunately, the Reply itself does not include this information. Instead, using improved but still inaccurate data, it simply lists newly revised estimates of the number of news “neighborhoods” using its self-serving and arbitrary “four within five” definition. Should, in the future, Bloomberg and Professor Crawford include the rest of their news channel omissions, they will eventually arrive at the actual average for the Comcast headends carrying BTV in the Relevant Markets of [REDACTED] (as detailed in Comcast’s Answer and its attached Egan and Israel Declarations).¹⁶

53. The difference between Bloomberg’s original number of 11.03 news channels as stated in the Complaint and my Declaration’s calculation of [REDACTED] is [REDACTED] news channels. It is interesting to note that nearly 80% of the difference is composed of just five types of channels or networks carried broadly by Comcast (1,793 lineups):

- The Weather Channel = 21%

¹⁵ Reply Ex. A (Crawford Reply Decl.) ¶¶ 22(c) & 25.

¹⁶ Of course, the [REDACTED] average includes only those news channels I included for news-neighborhood analyses purposes, and so, it excludes all HD, sports, and foreign language news channels.

- Current TV = 19%
- Government Access = 15%
- WeatherScan Local Network = 14%
- WORLD (carried on multicasts) = 9%

54. The balance of the difference, only about 20% of the total, comprises 66 different types of channels or networks carried on 527 lineups.

IV. Reply, Section III. B (The Neighborhoods Identified by Bloomberg Are Consistent with Industry Practice).

55. In this section, the Reply first rehashes its theories regarding the meaning of “significant number or percentage” of news channels from Sections III. A. 1 and III. A. 2. In short, as I detailed above, the definition of “significant” must be found within the context of the objectives of a neighborhood.

56. Bloomberg next accuses me of “cherry-picking” from the practices of “certain other MVPDs” in my analysis of news neighborhooding practices in the Relevant Markets. Of course, the truth of the matter is the opposite. For my Declaration, as explained previously, I researched and reported on the practices of the Top 14 MVPDs in their systems providing service to 96% of the multichannel TV subscribers in the Relevant Markets while Bloomberg originally examined a universe of one (Comcast).

57. At great length (pages 33–37) the Reply then concedes the simple observation I made in paragraph 27 of my Declaration. Bloomberg now recognizes and reports that four or five channel news groups are quite commonly deployed by the major cable MSOs, citing the frequency with which these news groups appear on the cable systems of Cablevision, Time Warner Cable, Cox, and Charter.

58. With this long-standing customary practice serving as a backdrop, it becomes easy for one to see the unique essence of the news neighborhoods that have been deployed by the

MVPDs with one-third of the Relevant Market's subscribers.¹⁷ Curiously, Bloomberg fails to recognize the glaring difference. Instead, the Reply simply equates all the news groups, as if, contrary to common sense as well as design intent, a four-channel group were not intrinsically (and quantifiably) different than a 10- or 15-channel group. In summing up its discussion on page 3 of the Reply, referring to the news neighborhoods deployed by the market leaders I identified in my declaration (DirecTV, Verizon, AT&T U-Verse, Insight, and Time Warner Cable), as well as the four-channel news groups offered widely throughout the country by Comcast, Cablevision, Cox, and Charter, Bloomberg states that "both qualify as neighborhoods."

59. Nationally, these MVPDs collectively account for 75 million subscribers and 10 of the Top 14 MVPDs. Therefore, Bloomberg is now arguing that, at a minimum, 10 of the Top 14 MVPDs with 75 million (80%) of the Top 14's 94 million multichannel TV subscribers broadly engage in news neighborhooding. Bloomberg does not even bother to address the five MVPDs constituting the balance of the Top 14. Without a doubt, some or most of those distributors also frequently deploy news groups of four channels or more that Bloomberg would characterize as news neighborhoods. As a result, it appears that Bloomberg's position is now that the deployment of news neighborhoods is a nearly universal practice among MVPDs in the United States, a conclusion I find implausible in the context of the number of news channels available in 2011, the Order, and this FCC proceeding.

60. While the opinions presented above are complete based on the information and documents made available to me, I reserve the right to expand, modify, or reduce my above findings and conclusions based on my review of any further disclosures made by any other

¹⁷ See Answer Ex. 4 (Egan Decl.) ¶ 22.

expert, additional information or documentation provided in this matter, or on testimony and exhibits introduced at any further time.

FOR PUBLIC INSPECTION

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


Michael Egan

Dated: September 26, 2011
Monroe, NY

Attachment A

Public Affairs, Business, News:	53%
Other:	47%

WORLD: Two-Week Schedule

Week of June 19 - June 25

	June 19	June 20	June 21	June 22	June 23	June 24	June 25
6:00 AM	European Journal	Hawaii: Roots of Fire	Faces of America	Beyond the Light Switch	Doha Debates	Lincoln: Prelude	Shipping Out
6:30 AM	Washington Week	Predator Legends					
7:00 AM	To the Contrary	Inside Washington	Asia 7 Days	J. McLaughlin's 1-on-1	Scully: the World Show	Ideas in Action	Who Does She Think She Is?
7:30 AM	Maria Hinojosa	Religion & Ethics	European Journal	Asia Biz Forecast	Closer to Truth	Second Opinion	
8:00 AM	Need to Know	Boxing Gym	Young Lincoln	Snap Judgment	Barbara Morgan	America Beyond the Color Line	Beijing Taxi
8:30 AM			Lincoln: Prelude				
9:00 AM				POV: Kings of Pastry		America Beyond the Color Line	
9:30 AM	Global Voices	Ribbon of Sand	Young Lincoln		Nova		Global Voices
10:00 AM		Nature: Victoria Falls	Abraham and Mary Lincoln	Frontline: The Madoff Affair	400 Years of the Telescope	Faces of America	Bold Visions
10:30 AM	Earthshaker						
11:00 AM	Consuelo Mack	Faces of America	Beyond the Light Switch	Doha Debates	Lincoln: Prelude	Barbara Morgan	400 Years of the Telescope
11:30 AM	Inside Washington						
12:00 PM	Independent Lens	Tavis Smiley	Tavis Smiley	Tavis Smiley	Tavis Smiley	Tavis Smiley	Shipping Out
12:30 PM		Tavis Smiley	Tavis Smiley	Tavis Smiley	Tavis Smiley	Tavis Smiley	
1:00 PM	Doha Debates	Inside Washington	Asia 7 Days	J. McLaughlin's 1-on-1	Scully: the World Show	Ideas in Action	Who Does She Think She Is?
1:30 PM		Religion & Ethics	European Journal	Asia Biz Forecast	Closer to Truth	Second Opinion	
2:00 PM	Need to Know	Boxing Gym	Young Lincoln	Snap Judgment	Barbara Morgan	America Beyond the Color Line	Beijing Taxi
2:30 PM			Lincoln: Prelude				
3:00 PM	Global Voices			POV: Kings of Pastry		America Beyond the Color Line	
3:30 PM		Ribbon of Sand	Young Lincoln		Nova		Global Voices

Week of June 26 - July 2

	June 26	June 27	June 28	June 29	June 30	July 1	July 2
6:00 AM	European Journal	400 Years of the Telescope	Faces of America	Global Voices	Global Voices	Who Does She Think She Is?	Inside Washington
6:30 AM	Washington Week						Washington Week
7:00 AM	To the Contrary	Inside Washington	Asia 7 Days	J. McLaughlin's 1-on-1	Scully: the World Show	Ideas in Action	To the Contrary
7:30 AM	Maria Hinojosa	Religion & Ethics	European Journal	Asia Biz Forecast	Closer to Truth	Second Opinion	Maria Hinojosa
8:00 AM	Need to Know	Class C: The Only Game in Town	PBS Previews	Dreamers Theater	Nova Science Now	Sgt. Fitch: Legacy of Sarg Records	Need to Know
8:30 AM			American Exp.: Lincoln Assassination				
9:00 AM	Global Voices	Yellowstone		POV: My Perestroika	Nova	Fats Domino	God in America
9:30 AM							
10:00 AM	Global Voices	Nature: the Beauty of Ugly	Abraham and Mary Lincoln	Frontline: The Child Cases	Jewels of the Jungle	Rock Prophecies	
10:30 AM							
11:00 AM	Consuelo Mack	Faces of America	Global Voices	Global Voices	Who Does She Think She Is?	Jewels of the Jungle	Consuelo Mack
11:30 AM	Inside Washington						Inside Washington
12:00 PM	POV: Kings of Pastry	Tavis Smiley	Tavis Smiley	Tavis Smiley	Tavis Smiley	Tavis Smiley	POV: My Perestroika
12:30 PM		Tavis Smiley	Tavis Smiley	Tavis Smiley	Tavis Smiley	Tavis Smiley	
1:00 PM		Inside Washington	Asia 7 Days	J. McLaughlin's 1-on-1	Scully: the World Show	Ideas in Action	
1:30 PM	Snap Judgment	Religion & Ethics	European Journal	Asia Biz Forecast	Closer to Truth	Second Opinion	Dreamers Theater
2:00 PM	Need to Know	Class C: The Only Game in Town	PBS Previews	Dreamers Theater	Nova Science Now	Sgt. Fitch: Legacy of Sarg Records.	Need to Know
2:30 PM			American Exp.: Lincoln Assassination				
3:00 PM	Global Voices	Yellowstone		POV: My Perestroika	Nova	Fats Domino	God in America
3:30 PM							

LEGEND	Business	News	Public Affairs	Other
--------	----------	------	----------------	-------

Attachment B

Public Affairs, Business, News:	70%
Other:	30%

MHz Worldview: Two-Week Schedule

Week of June 26 - July 2

	June 26	June 27	June 28	June 28	June 30	July 1	July 2
6:00 AM	NHK Programming	I Love You	NHK Programming	NHK Programming	NHK Programming	NHK Programming	NHK Programming
6:30 AM		EuroNews	EuroNews	EuroNews	EuroNews	EuroNews	
7:00 AM	France 24 News	France 24 News	France 24 News	France 24 News	France 24 News	France 24 News	France 24 News
7:30 AM	Week in France	RT News	RT News	RT News	RT News	RT News	European Journal
8:00 AM	World Affairs Today	Al Jazeera News	Al Jazeera News	Al Jazeera News	Al Jazeera News	Al Jazeera News	Global 3000
8:30 AM		Etv English	Etv English	Etv English	Etv English	Etv English	Tomorrow Today
9:00 AM	Dialogue	Newsline	Newsline	Newsline	Newsline	Newsline	drive it!
9:30 AM	Crosstalk	NHK Programming	NHK Programming	NHK Programming	NHK Programming	NHK Programming	Euromaxx Highlights
10:00 AM		Taiwan Outlook	Wilson Forum	Viewpoint with James Zogby	Viewpoint with James Zogby	Global Ethics Forum	Stichting Gl. Kids Show
10:30 AM	People and Politics					Gl. Ethics Forum "Classics"	Enviropals!
11:00 AM	The Doha Debates	Hello Vietnam	Hello Vietnam	Hello Vietnam	Hello Vietnam	Hello Vietnam	Darshan America
11:30 AM		Arirang News	Arirang News	Arirang News	Arirang News	Arirang News	Yo! TV
12:00 PM	Viewpoint with James Zogby	Viewpoint with James Zogby	Strictly Global	Taiwan Outlook	Asian Variety Show	Hablemos De Salud (Spanish)	Asian Variety Show
12:30 PM		France 24 News	France 24 News	France 24 News	France 24 News	France 24 News	
1:00 PM	NHK Programming	RT News	RT News	RT News	RT News	RT News	NHK Programming
1:30 PM		EuroNews	EuroNews	EuroNews	EuroNews	EuroNews	Hablemos De Salud (Spanish)
2:00 PM	Global Ethics Forum	European Journal	Global 3000	Tomorrow Today	drive it!	Euromaxx	
2:30 PM		Asian Variety Show	Taiwan Outlook	Asian Variety Show	Hablemos De Salud (Spanish)	Viewpoint with James Zogby	Viewpoint with James Zogby
3:00 PM	Wilson Forum						
3:30 PM							

Week of July 3 - July 9

	July 3	July 4	July 5	July 6	July 7	July 8	July 9
6:00 AM	NHK Programming	I Love You	NHK Programming	NHK Programming	NHK Programming	NHK Programming	NHK Programming
6:30 AM		EuroNews	EuroNews	EuroNews	EuroNews	EuroNews	
7:00 AM	France 24 News	France 24 News	France 24 News	France 24 News	France 24 News	France 24 News	France 24 News
7:30 AM	RT News	RT News	RT News	RT News	RT News	RT News	European Journal
8:00 AM	World Affairs Today	Al Jazeera News	Al Jazeera News	Al Jazeera News	Al Jazeera News	Al Jazeera News	Global 3000
8:30 AM		Etv English	Etv English	Etv English	Etv English	Etv English	Tomorrow Today
9:00 AM	Week in France	Newsline	Newsline	Newsline	Newsline	Newsline	drive it!
9:30 AM	Crosstalk	NHK Programming	NHK Programming	NHK Programming	NHK Programming	NHK Programming	Euromaxx Highlights
10:00 AM	People and Politics	Taiwan Outlook	Wilson Forum	Viewpoint with James Zogby	Viewpoint with James Zogby	Global Ethics Forum	Stichting Gl. Kids Show
10:30 AM	One on One					Gl. Ethics Forum "Classics"	Enviropals!
11:00 AM	The Doha Debates	Hello Vietnam	Hello Vietnam	Hello Vietnam	Hello Vietnam	Hello Vietnam	Darshan America
11:30 AM		Arirang News	Arirang News	Arirang News	Arirang News	Arirang News	Yo! TV
12:00 PM	Viewpoint with James Zogby	Viewpoint with James Zogby	Strictly Global	Taiwan Outlook	Asian Variety Show	Hablemos De Salud (Spanish)	Asian Variety Show
12:30 PM		France 24 News	France 24 News	France 24 News	France 24 News	France 24 News	
1:00 PM	NHK Programming	RT News	RT News	RT News	RT News	RT News	NHK Programming
1:30 PM		EuroNews	EuroNews	EuroNews	EuroNews	EuroNews	Hablemos De Salud (Spanish)
2:00 PM	Global Ethics Forum	Euromaxx	Euromaxx	Euromaxx	Euromaxx	Euromaxx	
2:30 PM	Gl. Ethics Forum "Classics"	Asian Variety Show	Taiwan Outlook	Asian Variety Show	Hablemos De Salud (Spanish)	Viewpoint with James Zogby	Viewpoint with James Zogby
3:00 PM	Wilson Forum						
3:30 PM							

LEGEND

News	Public Affairs	Other
------	----------------	-------

Attachment C

Public Affairs, Business, News:	59%
Other:	41%

Current TV: Two-Week Schedule

Week of June 21 - June 27

	June 21	June 22	June 23	June 24	June 25	June 26	June 27
6:00 AM	Life and Death on the Border	Doctors Without Borders	World's Toilet Crisis	4th and Forever	This American Life	Brokeback Mountain	Return to Paradise
6:30 AM				This American Life	infoMania		
7:00 AM	Countdown with Keith Olbermann	Do the Right Thing					
7:30 AM							
8:00 AM	Gateway to Heroin	Missionaries of Hate	Russian Neo-Nazis	4th and Forever	Doctors Without Borders	In the Valley of Elah	The Life of David Gale
8:30 AM			City on Steroids: Chongqing				
9:00 AM	Life and Death on the Border	Doctors Without Borders	World's Toilet Crisis	4th and Forever	This American Life	Brokeback Mountain	
9:30 AM				This American Life	infoMania		
10:00 AM	Countdown with Keith Olbermann	Brokeback Mountain	Doctors Without Borders				
10:30 AM							
11:00 AM	The OxyContin Express	Defeating Terrorism	Gateway to Heroin	Doctors Without Borders	4th and Forever	Brokeback Mountain	4th and Forever
11:30 AM		Beach of Death			4th and Forever		
12:00 PM	Countdown with Keith Olbermann	Brokeback Mountain	4th and Forever				
12:30 PM							
1:00 PM	Gateway to Heroin	Missionaries of Hate	Russian Neo-Nazis	4th and Forever	Doctors Without Borders	Brokeback Mountain	4th and Forever
1:30 PM			City on Steroids: Chongqing				
2:00 PM	Life and Death on the Border	Doctors Without Borders	World's Toilet Crisis	4th and Forever	This American Life	Brokeback Mountain	Return to Paradise
2:30 PM				This American Life	infoMania		
3:00 PM	Countdown with Keith Olbermann	Brokeback Mountain	The Life of David Gale				
3:30 PM							

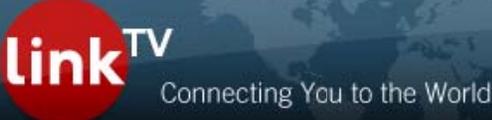
Week of June 28 - July 4

	June 28	June 29	June 30	July 1	July 2	July 3	July 4
6:00 AM	Guns in America	Doctors Without Borders	Soccer's Lost Boys	This American Life	4th and Forever	True Romance	Brokeback Mountain
6:30 AM					infoMania	Point Break	
7:00 AM	Countdown with Keith Olbermann	Countdown with Keith Olbermann	Countdown with Keith Olbermann	This American Life	Countdown with Keith Olbermann		Cuba: Waiting for Rev.
7:30 AM				Countdown K. Olbermann	4th and Forever		
8:00 AM	American Jihadi	Sex, Lies and Cigarettes	Gateway to Heroin	4th and Forever	4th and Forever	Cuba: Waiting for Rev.	In the Valley of Elah
8:30 AM				This American Life	4th and Forever		
9:00 AM	Guns in America	Doctors Without Borders	Soccer's Lost Boys	This American Life	4th and Forever	4th and Forever	
9:30 AM				This American Life	infoMania	Cuba: Waiting for Rev.	
10:00 AM	Soldiers in Prison	Soccer's Lost Boys	America's Secret War with Iran	Doctors Without Borders	This American Life		
10:30 AM			Defeating Terrorism	Doctors Without Borders	This American Life	Doctors Without Borders	Do the Right Thing
11:00 AM	Gateway to Heroin	World's Toilet Crisis	Sex, Lies and Cigarettes	Doctors Without Borders	4th and Forever	Doctors Without Borders	
11:30 AM					4th and Forever	True Romance	
12:00 PM	Countdown with Keith Olbermann						
12:30 PM						True Romance	Brokeback Mountain
1:00 PM	American Jihadi	Sex, Lies and Cigarettes	Gateway to Heroin	4th and Forever	4th and Forever		
1:30 PM				4th and Forever	4th and Forever	Point Break	
2:00 PM	Guns in America	Doctors Without Borders	Soccer's Lost Boys	This American Life	4th and Forever		
2:30 PM				This American Life	infoMania	Point Break	Brokeback Mountain
3:00 PM	Countdown with Keith Olbermann						
3:30 PM							In the Valley of Elah

LEGEND

News	Public Affairs	Other
------	----------------	-------

Attachment D



[RSS / Podcasts](#)

[ABOUT LINK TV](#) [PROGRAMMING](#) [GET INVOLVED](#) [ONLINE SERIES](#)

Declare Your Independence from Corporate Media

FREE MEDIA! **GIVE NOW**

SUPPORT LINK TV

[Close](#)

Home > Programming > Schedule

For Link web members only! **New Upgraded Schedule**

Not a member? Join the Link community now, it's free! [Click here](#)

Programming Schedule for the week of Wednesday, September 7th 2011 [View daily schedule](#) **Timezone: P M C E**
 DIRECTV Channel 375, DISH Network Channel 9410

■ News & Current Affairs
 ■ World Music
 ■ Documentaries
 ■ World Cinema
 [Print Schedule](#)

[< Previous Week](#) [Next Week >](#)

	Wednesday 9/7	Thursday 9/8	Friday 9/9	Saturday 9/10	Sunday 9/11	Monday 9/12	Tuesday 9/13
12am	Special: FAIR 25th Anniversary Spe...	Special: The Israel Lobby	Special: FAIR 25th Anniversary Spe...	Special: The Israel Lobby	9/12: From Chaos to Community	Special: 9/11 - Press for Truth	Special: FAIR 25th Anniversary Spe...
1am	DW Journal	DW Journal	DW Journal	DW Journal	Ken Watanabe's America: Japanese...		DW Journal
	Mosaic: World News From The Middle East			Mosaic: World News From The Middle East			

Exhibit 2

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Complaint of)	
)	
Bloomberg L.P.)	MB 11-104
)	
v.)	
)	
Comcast Cable Communications)	

Supplemental Declaration of Mark A. Israel
September 26, 2011

- 1) I am Mark A. Israel I am a Senior Vice President and Managing Director in the Washington, DC office of Compass Lexecon, LLC, an economic consulting firm. Additional biographical information, including my curriculum vitae, is included with my July 27, 2011 declaration.¹
- 2) On July 27, 2011, Comcast Communications Corporation (“Comcast”) responded² to a Complaint by Bloomberg L.P. (“Bloomberg”).³ The Comcast response included a declaration in which I presented calculations to assess the extent to which the channel line-ups of Comcast and other top multi-video programming distributors (MVPDs) contain groupings of news channels. I have been asked by counsel for Comcast to make additional calculations using Comcast channel line-up data in order to analyze the frequency of Comcast channel line-up changes over the course of a year.
- 3) To analyze channel line-up changes, I rely upon proprietary Comcast line-up data. In my previous declaration, I used data published by Tribune Media Services (“TMS”), the same source relied on by Professor Gregory S. Crawford,⁴ an economist retained by Bloomberg. However, my TMS data only provide a snapshot as of June 22, 2011. In contrast, Comcast’s own data allow me to assess all channel line-up changes since June 2010.
- 4) Comcast provided me with two databases. The first is a static dataset of Comcast channel line-ups as of June 29th, 2011, which provides the universe of all Comcast channel line-ups at all head-ends nationwide. The second contains an exhaustive list of channel line-up changes since June 2010. Each dataset contains a unique channel line-up identifier, thus enabling me to link the two datasets.
- 5) Counsel for Comcast asked me to ascertain, for each of the Comcast channel line-ups in the 35 most populous DMAs,⁵ the extent to which networks in channel positions one through 99 have changed positions since June 2010.⁶ In particular, I determine the frequency with which a given network on a given Comcast channel line-up has moved from one channel position to another, with either the network’s initial or final channel position being between one and 99.
- 6) I proceed as follows:
 - First, I limit the database of network position changes to include only those changes that

¹ *In re Complaint of Bloomberg L.P. v. Comcast Cable Communications, LLC*, Declaration of Mark A. Israel, MB 11-104, July 27, 2011.

² *In re Complaint of Bloomberg L.P. v. Comcast Cable Communications, LLC*, Answer of Comcast Cable Communications, LLC, MB 11-104, July 27, 2011.

³ *In re Complaint of Bloomberg L.P. v. Comcast Cable Communications, LLC*, Complaint, MB 11-104, June 13, 2011 (hereinafter *Complaint*).

⁴ *See In re Complaint of Bloomberg L.P. v. Comcast Cable Communications, LLC*, Declaration of Gregory S. Crawford, MB 11-104, June 13, 2011 (hereinafter *Crawford Declaration*), and Reply Declaration of Gregory S. Crawford, MB 11-104, August 30, 2011 (hereinafter *Crawford Reply Declaration*).

⁵ Comcast operates in 26 of these 35 DMAs.

⁶ Hereafter, all references to network channel position changes refer to changes involving channels one to 99.

involved a channel position below 100.⁷ To do so, I keep only those observations in the data where a network’s initial channel position was under 100, its final channel position was under 100, or both its initial and final channel positions were under 100.

- I then add up the number of network position changes for each channel line-up to get a total number of channel line-up changes since June 2010.
 - Next, using the June 2011 channel line-ups, I limit the database to only those line-ups in the 35 most populous DMAs. For these [REDACTED] line-ups, I then summarize the total number of occupied channel positions between one and 99. I do so by counting the number of occupied channel positions in each of the [REDACTED] line-ups.⁸ I find that these [REDACTED] channel line-ups have an average of [REDACTED] occupied channel positions between one and 99, similar to Professor Crawford’s average of [REDACTED] channel positions between one and 99.⁹
 - Finally, in order to ascertain the number and percentage of networks changing positions (per line-up) I merge the two summaries by their unique channel line-up identifier.¹⁰
- 7) I summarize the results on channel line-up changes in Tables 1 and 2 below. I find that, overall, an average of 2.4 percent of networks changed position, approximately equal to Professor Crawford’s estimate of 2.4 percent.¹¹

Table 1: Summary of Channel Position Changes for Comcast Channel Line-ups

{	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
}						

⁷ The Comcast line-up data include a small number of observations with channel positions of zero, which I exclude for the purposes of these calculations. When referring to channel positions “below 100”, I mean those channels greater than zero and less than 100.

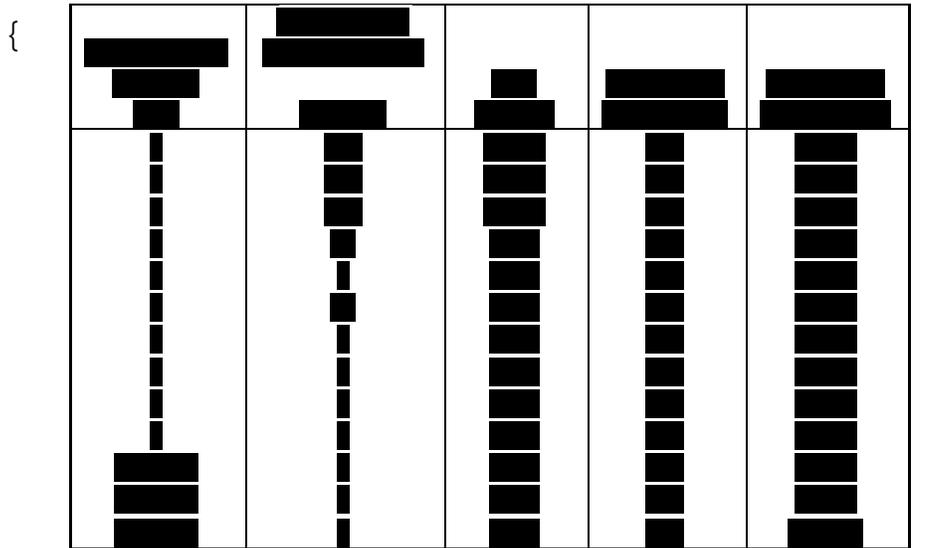
⁸ The June 29th, 2011 Comcast line-up database actually contained [REDACTED] unique line-up identifiers, but only [REDACTED] are located in the 35 most populous DMAs and contain occupied channel positions between one and 99.

⁹ Crawford Reply Declaration, ¶ 109.

¹⁰ There were position changes for 36 unique channel line-up identifiers that could not be matched to line-ups in the channel line-up database.

¹¹ Crawford Reply Declaration, ¶ 109.

Table 2: Summary of Channel Position Changes by Number of Changes per Line-up



- 8) Although the average percentage of network position changes per line-up is 2.4 percent, this number masks the fact that nearly one-half (45 percent) of all channel line-ups have experienced *no* network position changes in the period since June 2010. Indeed, excluding just the top five percent of line-ups (by number of network position changes), only an average of 1.3 percent of networks have changed positions since June 2010, with fewer than one change per line-up on average.
- 9) I also calculated the number of network position changes that involved a network moving from a 3-digit channel position to a 2-digit channel position (that is, the number of cases in which networks that were previously not in the 1-99 channel range moved into the 1-99 range). I find that, of the ██████ Comcast line-ups, only ██████ line-ups have experienced such a 3-digit to 2-digit network position change in the period since June 2010. Put another way, ██████ percent of Comcast line-ups have experienced no such network position change since June 2010. In all, during the time period since June 2010, there have been ██████ such network position changes, out of 43,003 total occupied channel positions from 1-99 (across all of the line-ups in the 35 most populous DMAs), meaning that an average of only 0.3 percent of all occupied channel positions from one to 99 are occupied by networks that have made such a 3-digit to 2-digit position change.
- 10) Using additional reason codes provided in the dataset of channel changes, I was able to summarize what factors led to the various network position changes. For line-ups that experienced more than 3 changes in the period since June 2010 (the top 5 percent of line-ups by number of network position changes), a substantial majority of network position changes was due to matching line-ups to line-ups of other nearby head-ends, or technological upgrades such as converting analog signals to all-digital signals.

11) Based on these reason codes, the majority of network position changes on each of the eight head-ends mentioned in Bloomberg’s August 30th Reply¹² were due to matching line-ups to nearby head-ends, technological upgrades, and (in one instance) restructuring a lineup that previously offered only broadcast-basic service into one offering both broadcast-basic and expanded-basic services. To add perspective to the importance of these eight head-ends to the universe of Comcast’s line-ups, Table 3 below lists the number of subscribers for each of the line-ups. As a reference, Comcast serves approximately [REDACTED] subscribers in the top 35 DMAs, and [REDACTED] nationally.

Table 3: Comcast Subscribers per Line-up

Division	Region	DMA	Line-Up	Subscribers
Central Division	Coastal Region	Tallahassee-Thomasville	Madison	[REDACTED]
Central Division	Coastal Region	Tallahassee-Thomasville	Quitman	[REDACTED]
Central Division	Heartland Region	Detroit	Ad Royal Oak Rb	[REDACTED]
Central Division	Heartland Region	Indianapolis	Ad Shelbyville	[REDACTED]
Northeast Division	Beltway Region	Roanoke-Lynchburg	Amherst	[REDACTED]
Northeast Division	Beltway Region	Roanoke-Lynchburg	Lynchburg	[REDACTED]
Northeast Division	Beltway Region	Washington, Dc (Hagrstwn)	Culpeper	[REDACTED]
Northeast Division	Beltway Region	Washington, Dc (Hagrstwn)	Martinsburg	[REDACTED]

¹² *In re Complaint of Bloomberg L.P. v. Comcast Cable Communications, LLC*, Reply of Bloomberg L.P. To Answer of Comcast Cable Communications, LLC, MB 11-104, August 30, 2011, pp. 53-63.

A handwritten signature in cursive script, appearing to read "Mark A. Israel", is written over a horizontal line.

Mark A. Israel
September 26, 2011
Washington, DC