

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
THE TENNIS CHANNEL, INC.) MB Docket No. 10-204
) File No. CSR-8258-P
v.)
)
COMCAST CABLE COMMUNICATIONS, LLC)

To: The Commission

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

PETITION TO COMPEL
COMCAST'S COMPLIANCE WITH INITIAL DECISION

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SUMMARY

In a comprehensive 54-page ruling that followed an extensive evidentiary hearing, the Commission's Chief Administrative Law Judge (ALJ) found that Comcast Cable Communications, LLC ("Comcast") discriminates against Tennis Channel, Inc. ("Tennis Channel") and in favor of Golf Channel and Versus¹ on the basis of affiliation within the meaning of Section 616 of the Communications Act of 1934 and the Commission's rules.² The Chief Judge ordered Comcast to remedy its discrimination by providing equal carriage treatment "as soon as practicable."³

Comcast believes that it need not comply with the ruling—and that the full burden of its ongoing and adjudicated discrimination must fall on Tennis Channel—until Comcast has exhausted its appeal to the full Commission (and presumably through the federal courts). But this view ignores the clear terms of Section 616 and its implementing rules, which provide that the ruling "shall become effective upon release." Comcast's view also ignores the clear and controlling directive of the Media Bureau order designating the case for hearing, which similarly requires that the decision become effective immediately. These directives are critical to the implementation of the Congressional directive that review and relief for the victims of Section 616 discrimination be expedited.

¹ Versus has now been renamed NBC Sports Network. Because Versus has been the service's name throughout the entirety of the proceeding and it is referred to as Versus in all pleadings and documents, we continue to do so here.

² *Tennis Channel, Inc. v. Comcast Cable Communications, L.L.C.*, Initial Decision of Chief Administrative Law Judge Richard L. Sippel, MB Docket No. 10-204, File No. CSR-8258-P, 11D-01, at ¶¶ 53-61, 105-14, 122 (rel. Dec. 20, 2011) [hereinafter "Initial Decision"].

³ *Id.* at ¶¶ 119-21, 126-27.

The Presiding Judge recognized the importance of immediate relief, ordering Comcast to remedy its discrimination “as soon as practicable.” However, Comcast insists that the final footnote of the Initial Decision justifies its continued non-compliance with the remedies ordered by the Decision.⁴ Comcast’s reading of that footnote is contrary to the Initial Decision’s mandate of prompt compliance, would disregard the Commission’s rules and the Media Bureau’s designation order, would require a Commission finding that the Presiding Judge had exceeded his authority, and cannot be squared with the fundamental purpose of Section 616.

Tennis Channel has for almost three years sought to obtain access to [REDACTED] Comcast subscriber homes that Comcast discriminatorily denies to Tennis Channel but grants to its competing affiliated program services, Versus and Golf Channel. During this time, as the ALJ has found, Tennis Channel has suffered significant competitive harm from Comcast’s discrimination. It would punish Tennis Channel and reward Comcast for its discrimination by allowing Comcast to avoid compliance even *after* it has been found to have violated Section 616—a violation found by the ALJ to be sufficiently egregious to warrant the imposition of the largest forfeiture available to the Commission under the law.⁵

⁴ *Id.* at ¶ 125 n.361 (stating that decision “shall become effective and this proceeding shall be terminated 50 days after release if exceptions are not filed within 30 days thereafter, unless the Commission elects to review the case of its own motion”).

⁵ This petition is filed pursuant to Sections 4 and 616 of the Communications Act of 1934, as amended, *see* 47 U.S.C. §§ 154(i), 536, and 47 C.F.R. § 1.41 (“Except where formal procedures are required . . . , requests for action may be submitted informally.”); *see also id.* § 1.1.

BACKGROUND

On January 5, 2010, following an almost year-long effort to obtain fair carriage from Comcast, Tennis Channel brought an action before the Commission to enforce the statutory ban⁶ against discrimination on the basis of affiliation.⁷ On October 5, 2010, the Media Bureau found that Tennis Channel had made a *prima facie* case of discrimination by Comcast, and it designated the case for a hearing.⁸ Following the completion of discovery and the submission of written direct testimony, a full evidentiary hearing was held before the ALJ from April 25, 2011 through May 2, 2011.

Following the hearing, the Enforcement Bureau, participating as a party and representing the public interest, filed comments recommending that Comcast be assessed the maximum forfeiture permitted by law and be required to remedy its discrimination against Tennis Channel.⁹ The Presiding Judge agreed, concluding that Comcast had engaged in unlawful, affiliation-based discrimination in its carriage of Tennis Channel, Golf Channel, and Versus.¹⁰ In reaching this conclusion, the Judge found that “Tennis Channel, Golf Channel, and Versus are similarly situated networks,” and he “rejected as unreliable” and “unpersuasive” Comcast’s proffered expert testimony to the contrary.¹¹ He further found that Comcast systematically discriminates against Tennis Channel by providing Golf Channel and Versus with far broader

⁶ 47 U.S.C. § 536; 47 C.F.R. § 76.1301(c).

⁷ Program Carriage Complaint (Jan. 5, 2010).

⁸ *The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, MB Docket No. 10-204, File No. CSR-8258-P, DA 10-1918, at ¶¶ 17, 19, 20 (rel. Oct. 5, 2010) [hereinafter “HDO”].

⁹ Enforcement Bureau’s Comments (July 8, 2011).

¹⁰ Initial Decision at ¶¶ 122-24.

¹¹ *Id.* at ¶¶ 24, 29, 35. By contrast, the Presiding Judge found that Tennis Channel’s experts testified “creditably” and “persuasively.” *Id.* at ¶¶ 48, 49.

distribution and more favorable channel placement than Tennis Channel, and that as a general proposition it carries affiliated sports networks more broadly than unaffiliated sports networks.¹² The Presiding Judge also found that “the differences in channel placement and penetration level [of the three networks] are based upon affiliation” and are not the result of neutral non-discriminatory decisions, and that Comcast’s discrimination “has adversely affected the ability of Tennis Channel to compete fairly in the video programming marketplace.”¹³

The Initial Decision “requires Comcast Cable to carry Tennis Channel at the same level of distribution that it carries Golf Channel and Versus”¹⁴ and to provide “equitable treatment . . . as to channel placement.”¹⁵ In the final ordering paragraph in the decision, the Presiding Judge mandated that Comcast “*proceed as soon as practicable with remediation.*”¹⁶

Comcast has now stated, both in public comments and directly to Tennis Channel representatives, that it does not believe the Initial Decision is currently effective and that it does not believe it is required to implement any changes in its distribution until its exceptions to the decision—which have not yet been filed—are fully resolved, at least by the Commission.¹⁷ To

¹² *Id.* at ¶¶ 53-61.

¹³ *Id.* at ¶¶ 55, 81.

¹⁴ *Id.* at ¶ 119. The Initial Decision provides that “[t]he requirement that Comcast Cable give Tennis Channel the same treatment in video program distribution as it provides to Golf Channel and Versus . . . excludes parity on analog systems where the addition of Tennis Channel would require displacement of existing networks.” *Id.* at ¶ 119 n.353.

¹⁵ *Id.* at ¶ 120.

¹⁶ *Id.* at ¶ 127 (emphasis added). The Presiding Judge also imposed on Comcast “a forfeiture in the amount of \$375,000”—the maximum fine allowable under the law. *Id.* at ¶ 118. Comcast should be ordered to pay this forfeiture promptly.

¹⁷ A Comcast representative has “disputed . . . that the decision would go into effect while Comcast appeals” and “said the ruling [is] not final for 50 days.” Richard Sandomir, “F.C.C. Judge Rules for Tennis Channel in Dispute With Comcast,” *The New York Times* (Dec. 20, 2011). This representative also indicated that Comcast would “ask the commission to stay [the Initial Decision’s] implementation,” *id.*, and that Comcast may seek review “by the full (continued...) ”

be sure, Comcast has begun discussions with Tennis Channel regarding how it could comply with the Initial Decision once, in Comcast's view, that decision becomes effective. But Comcast has also made clear that it will exercise its perceived right not to comply until there is an additional ruling from the Commission directing compliance. Because continued non-compliance would further harm Tennis Channel and is flatly prohibited by Section 616, the Commission's rules, and the Media Bureau's Hearing Designation Order, Tennis Channel seeks an order from the Commission directing Comcast's prompt compliance.

**THE COMMISSION SHOULD ORDER COMCAST TO COMPLY
IMMEDIATELY WITH THE INITIAL DECISION.**

I. Comcast Is Required To Provide Non-Discriminatory Carriage As Soon As Is Practicable.

A. Section 616 and the Commission's Regulations Make the Presiding Judge's Decision Immediately Effective.

Because of the important public interests that Section 616 serves,¹⁸ Congress directed the FCC to "provide for expedited review" of complaints regarding violations of its dictates.¹⁹ The Commission, in turn, has explicitly recognized the need for swift resolution of carriage cases. Anything other than swift resolution of program carriage complaints would perpetuate the very harm to independent programmers and the public interest that Section 616 was intended to prevent.²⁰

Commission and then, if needed, the U.S. Court of Appeals," Sena Fitzmaurice, Vice President, Government Communications, Comcast, "Comcast Comment on Tennis Channel Initial Decision By FCC Judge" (Dec. 20, 2011), at <http://blog.comcast.com/2011/12/comcast-comment-on-tennis-channel-initial-decision.html>. Comcast has not yet requested a stay or filed an appeal.

¹⁸ See, e.g., 47 U.S.C. § 521 note, Pub. L. No. 102-385 § 2, 106 Stat. at 1460-61.

¹⁹ 47 U.S.C. § 536(a)(4).

²⁰ *In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video* (continued...)

Reflecting these goals, Section 76.1302 of the Commission's rules, which governs this proceeding, requires that a remedial order issued upon completion of a program carriage hearing "shall set forth a timetable for compliance, *and shall become effective upon release.*"²¹ The Commission's order adopting Section 76.1302 unmistakably confirms that a ruling on the merits by the ALJ was intended to be "effective upon release."²² And it flatly mandates that "[i]n the absence of a stay, any relief," with an exception not relevant here, "*will remain in effect pending appeal.*"²³

The general rules covering multichannel television service also confirm the immediate effective date of the remedy in this case:

Any party to a part 76 proceeding aggrieved by any decision on the merits by an [ALJ] may file an appeal . . . directly with the Commission, in accordance with §§1.276(a) and 1.277(a) through (c) of this chapter, except that in proceedings brought pursuant to [Section 76.1302 and certain other sections], *unless a stay is granted by the Commission, the decision by the [ALJ] will become effective upon release and will remain in effect pending appeal.*²⁴

Programming Distribution and Carriage, 9 FCC Rcd. 2642, MM Docket No. 92-265, ¶ 23 (1993) ("1993 Second Report and Order").

²¹ 47 C.F.R. § 76.1302(g)(1) (emphasis added) (citations are to the version of the regulation in effect when this case began; the relevant language has not changed). The regulation includes an exception for situations where an "order of mandatory carriage would require the defendant [MVPD] to delete existing programming from its system to accommodate carriage of a video programming vendor's programming." This exception is inapplicable here, since Tennis Channel did not ask for—and the Presiding Judge did not order—such relief.

²² 1993 Second Report and Order, 9 FCC Rcd 2642, ¶ 34; *see also Second Report and Order in MB Docket No. 07-42 and Notice of Proposed Rulemaking in MB Docket No. 11-1131*, FCC 11-119, ¶ 56 (Aug. 1, 2011) (confirming that ALJ relief is effective immediately) [hereinafter "2011 Second Report and Order"].

²³ 1993 Second Report and Order, 9 FCC Rcd 2642, ¶ 34 (emphasis added).

²⁴ 47 C.F.R. § 76.10(c)(2) (emphasis added). Comcast has not requested a stay of the Initial Decision, nor could it do so successfully. "Stays will not be routinely granted," 1993 Second Report and Order, 9 FCC Rcd. 2642, ¶ 34, and Comcast cannot make the requisite four-factor showing, *see Hispanic Info. and Telecomm. Network, Inc.*, 20 FCC Rcd 5471, 5480 & n.79 (2005).

These statutory and regulatory directives to provide “expedited review” in program carriage cases, and to make remedial orders “effective upon release,” recognize the inherent harm to unaffiliated networks from discrimination and the need to provide relief as soon as possible. They also recognize the public interest in eliminating discrimination—and the lack of any right on the cable company’s part to perpetuate its conduct once a finding of discrimination has been made.

Immediate prospective relief is particularly important in carriage cases. Successful parties cannot obtain damage awards for prior intentional discriminatory behavior, and Tennis Channel cannot be made whole for the unlawful limitations Comcast has put on its distribution. Just as “allowing for the award of damages would be useful in deterring program carriage violations,” as the Commission has recognized,²⁵ so the lack of damages in this case and any delay in enforcing the injunctive relief ordered by the Presiding Judge will encourage violations and undermine the regime Congress and the Commission have created.

B. The Orders In This Case Require Immediate Relief.

The Presiding Judge set precisely the timetable required by the rules; he ordered Comcast to comply “as soon as practicable” by equalizing carriage among Tennis Channel, Golf Channel, and Versus, and by providing equal treatment in terms of channel placement.²⁶ That timetable was consistent with—indeed, was mandated by—not only the rules cited above, but also the

²⁵ 2011 Second Report and Order, at ¶ 51 (seeking comment on a proposal to allow the award of damages in program carriage cases).

²⁶ Initial Decision at ¶¶ 119-127. The regulations permit carriage complaints to be referred to an ALJ for hearing, *see* 47 C.F.R. §§ 76.1302(a), 76.7(g)(1); 1993 Second Report and Order, ¶¶ 24, 34, and they authorize a “remedy ordered by the staff or [ALJ],” to be effective immediately, *see* 47 C.F.R. § 76.1302(g). The hearing here occurred pursuant to this process. And the resulting remedial order, issued by the ALJ in his exercise of delegated authority, is binding on the parties. *See* 47 C.F.R. §§ 1.101, 0.203(a), (b), 0.204(a).

grant of authority the Presiding Judge received from the Media Bureau, which in designating this matter for hearing explicitly ordered that “[u]nless the Commission grants a stay of the ALJ’s decision, such decision will become effective upon release and will remain in effect pending appeal.”²⁷

Comcast finds nothing in Section 616, its supporting rules, or the designation order that would permit it to avoid compliance. Instead, Comcast’s sole stated basis for refusing to comply with the ruling appears to be the Initial Decision’s final footnote, which states that it “shall become effective and this proceeding shall be terminated 50 days after release if exceptions are not filed within 30 days thereafter, unless the Commission elects to review the case of its own motion.”²⁸ This language can be read as simply noting when the hearing proceeding will be officially terminated and referring the parties to the Commission’s general rules governing appeals and exceptions.²⁹ The footnote cannot sensibly be read as intending to supersede the Presiding Judge’s own order—which flowed directly from the serious misconduct the Presiding Judge found—that Comcast must remedy its discrimination “as soon as practicable.” Nor should the Presiding Judge be presumed to have disregarded the provisions of the regulations and the Hearing Designation Order making the ruling “effective upon release”: “The Commission has

²⁷ HDO at ¶ 23 n.119 (emphasis added). There is a limitation in the HDO regarding deletion of existing programming, *id.*, but as noted above, this limitation does not apply here.

²⁸ *Id.* at ¶ 125 n.361. Notably, this footnote is appended to the paragraph ordering that Comcast pay a forfeiture, not to any order relating to Comcast’s obligation to change its carriage practices—suggesting also that the ALJ may have intended the footnote to relate only to the forfeiture.

²⁹ These general rules provide that initial decisions are not effective until 50 days after they are publicly released, “unless otherwise ordered by the Commission.” 47 C.F.R. § 1.276(d). The Commission has “otherwise ordered” in Sections 76.10(c)(2) and 76.1302(g)(1) and the HDO.

held that an ALJ may not countermand a designation order issued under delegated authority as to matters already considered by the delegating authority.”³⁰

There simply is no basis for concluding that the Presiding Judge disregarded the designation order by which he was bound. If, of course, Comcast’s reading of the footnote were to prevail, the Commission would in any event be required under its own rules to treat the ALJ’s action as *ultra vires* and impose its own order immediately effectuating his decision.

II. Tennis Channel Is Suffering Ongoing and Irreparable Competitive Harm from Comcast’s Adjudicated Discrimination.

The affiliation-based discrimination in this case, perpetrated by the nation’s largest vertically integrated distributor, harms Tennis Channel and the public. With discrimination now having been definitively found, Comcast should not be allowed to perpetuate this harm.³¹

Comcast’s discrimination against Tennis Channel injures the network in every material way in which it could compete in the marketplace, and in every negotiation and transaction in which it engages on a daily basis.³² It also injures viewers, who must pay an additional \$5 to \$8

³⁰ *Tequesta Television, Inc.*, 2 FCC Rcd. 41, at ¶ 10 (FCC 1987); *see also* 47 C.F.R. § 0.204(a) (authorizing “official . . . to whom authority is delegated” to “issue orders . . . pursuant to such authority”) (emphasis added); *Algreg Cellular Engineering*, 9 FCC Rcd 5098, ¶ 75 (Rev. Bd. 1994) (ALJ “had no authority” to limit intervenors’ participation contrary to the HDO); *Anax Broad. Co.*, 87 FCC 2d 483, at ¶ 12 n.11 (FCC 1981) (“[A]n ALJ may not modify hearing issues on grounds already considered in the Designation Order.”); *Atlantic Broad. Co.*, 5 FCC 2d 717, at ¶ 9 (FCC 1966) (where there has been “a thorough consideration of the particular question in the designation order, the subordinate officials” are “expected, in the absence of new facts or circumstances, to follow [the Commission’s] judgment as the law of the case”).

Here, the Hearing Designation Order on its face evidences that the Media Bureau, acting itself by designated authority, thoroughly considered the matter and reiterated the legal requirement that the ALJ’s decision would take effect immediately upon release.

³¹ The factors addressed in this section parallel the considerations for granting a stay. *See Hispanic Info. and Telecomm. Network, Inc.*, 20 FCC Rcd 5471, 5480 & n.79 (2005).

³² As the Presiding Judge found, “Comcast Cable’s unequal treatment of Tennis Channel *vis-à-vis* its sports affiliates has adversely affected the ability of Tennis Channel to compete fairly in the video programming marketplace.” Initial Decision at ¶ 81. Tennis Channel is uniquely and (continued...)

per month to receive the sports tier on which Comcast carries Tennis Channel on most systems— or else forgo this programming.³³

Comcast lost on the merits of this case at every stage. The Initial Decision confirmed that Tennis Channel has been victimized by discrimination—as did the Media Bureau’s HDO and the Enforcement Bureau’s comments in support of Tennis Channel filed after the hearing was completed. The ALJ’s decision was based on six days’ worth of testimony from fact and expert witnesses, as well as over 860 exhibits. The hearing record is over 2700 pages long. Moreover, the anti-discrimination remedy imposed by the ALJ is straightforward, consistent with

severely harmed in several ways. Most immediately, its subscriber count has been depressed dramatically, by [REDACTED]. *Id.* at ¶ 82. In addition, Comcast’s unmatched size and its influence on other distributors’ carriage decisions causes a much broader effect on Tennis Channel’s ability to compete in the larger marketplace—the [REDACTED] that the Presiding Judge found from Comcast’s discrimination. *Id.*

These harms necessarily have “diminished the amount of . . . license fees” that Tennis Channel is able to earn, making it “more difficult for Tennis Channel to make investments (*e.g.*, procuring sports programming rights) that are necessary for Tennis Channel to remain competitive with other sports networks.” *Id.* at ¶¶ 81, 83. Tennis Channel’s ability to obtain programming rights is also harmed because “those holding broadcast rights to high-profile events ‘want the widest exposure possible,’ and therefore favor networks having wider distribution.” *Id.* at ¶ 86. Moreover, advertisers, like programmers, seek the broadest possible viewership, and Comcast’s suppression of Tennis Channel’s distribution makes it “more difficult for the network to sell advertising,” and causes the network to “receive[] less advertising revenues from the advertisements that it is able to sell.” *Id.* at ¶¶ 89-91.

³³ *Id.* at ¶¶ 84-85. Section 616 protects the interests of viewers in being able to access a diverse set of media voices. *See* 47 U.S.C. § 521(4); *id.* note, Pub. L. No. 102-385 § 2(a)(2), 106 Stat. at 1460. Comcast, for its part, only benefits from continuing its discrimination against Tennis Channel. It would continue to enjoy the competitive advantage for its channels that Section 616 prohibits, both in terms of their general ability to compete and in terms of specific instances of head-to-head competition with Tennis Channel. For example, [REDACTED] [REDACTED]. *See* Proposed Findings of Fact and Conclusions of Law of The Tennis Channel, Inc., ¶¶ 43-44, 87-95, 183-193, 287 (June 7, 2011) (citing evidence); Tennis Channel Ex. 41 (Comcast internal document [REDACTED]).

the FCC's rules, and achievable. It should be effectuated and implemented "as soon as practicable."

We are compelled to note that Comcast's desire to avoid complying in this case also appears to be driven in part by its displeasure with Section 616 itself. Comcast has repeatedly urged that Section 616—a statutory provision that Congress has enacted and seen fit to retain—be treated as unnecessary and unenforceable, stating that "the goals of the statute have been fulfilled by the competitive marketplace"³⁴ and that "[d]eference to the marketplace is even more appropriate today than when . . . [Section 616 was] written."³⁵ Comcast has similarly offered interpretations of the statute that would nullify it,³⁶ and it has urged the Commission to

³⁴ *Revision of the Commission's Program Carriage Rules*, MB Docket No. 11-131, Comments of Comcast Corporation, at 2 (Nov. 28, 2011); *see also id.* at 1, 7 (the constraints of Section 616 "simply cannot be justified in today's marketplace") [hereinafter "Comcast Comments"].

³⁵ *NFL Enterprises LLC v. Comcast Cable Communications, LLC*, File No. CSR-7876-P, Answer of Comcast Cable Communications, LLC, at ¶ 41 (June 20, 2008).

³⁶ Comcast has suggested that the costs of providing non-discriminatory carriage create a complete defense to Section 616. *See, e.g.*, Tr. at 170:5-171:9 (opening argument of counsel for Comcast) ("[W]e're not running a charity organization."). But Congress found that discrimination often is profitable to vertically integrated firms, so much so that it contemplated barring vertical integration altogether. Cable Television Consumer Protection and Competition Act of 1992, S. Rep. No. 102-92, at 25, 27 (1991). It ultimately allowed cable companies to own content, but only subject to Section 616. As the Chief ALJ explained, "Comcast has an economic incentive" to discriminate; doing so "is monetarily advantageous . . . , but it also clearly is affiliation-based discrimination which Congress has outlawed." Initial Decision at ¶ 80. Another example of Comcast's efforts to nullify Section 616 is its claim that enforcement would violate the First Amendment; this claim has correctly been rejected. *See, e.g., id.* at ¶¶ 102-04; *Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage, Part III*, MB Docket No. 07-42, FCC 11-119, 76 Fed. Reg. 60652, ¶ 27 n.58 (Sept. 29, 2011) [hereinafter "2011 Rulemaking"]. Other examples of Comcast theories that would nullify Section 616 include its year of launch test, *see* Written Direct Testimony of Michael Egan at ¶ 7, which would put countless networks outside the protections of the law, and its reliance on the ability of any given network to attain distribution through "avenues" other than Comcast cable systems, *see* Proposed Findings of Fact and Conclusions of Law of Defendant Comcast Cable Communications, LLC, at ¶¶ 4, 143, 168 (June 7, 2011).

“eliminate regulations that have long outlived their usefulness.”³⁷ The Commission has repeatedly rejected these views.³⁸

Nonetheless, Comcast clearly has no respect for this regulatory regime. And this is not the first time it has ignored the federal mandate against program carriage discrimination. In an FCC economic analysis that examined Versus, Golf Channel, and two other Comcast-owned channels in connection with the Comcast-NBC Universal merger, the Commission’s Chief Economist concluded “(1) that Comcast currently favors its affiliated programming [including Golf Channel and Versus] in making [carriage and channel placement] decisions and that (2) this behavior stems from anticompetitive motives rather than due to reasons that arise from vertical efficiencies.”³⁹ The Commission observed in the merger order that Comcast “may have in the past discriminated in program access and carriage in favor of affiliated networks for anticompetitive reasons,” and it imposed on the parties to the merger specific remedies designed to avoid a continuation of that behavior.⁴⁰ But Tennis Channel is by no means alone in its complaint that Comcast continues to seek to evade its responsibilities.⁴¹

³⁷ Comcast Comments at 6.

³⁸ See, e.g., 2011 Rulemaking, 76 Fed. Reg. 60652 (strengthening rules implementing Section 616); *id.* at ¶ 33 (“[W]e find that the substantial government interests in promoting diversity and competition remain.”).

³⁹ *Applications of Comcast Corp. et al. for Consent to Assign Licenses and Transfer Control of Licensees*, Mem. Op. and Order, Tech. App. ¶ 65 (FCC rel. Jan. 20, 2011) [hereinafter “NBCU Order”]

⁴⁰ *Id.* at ¶ 117.

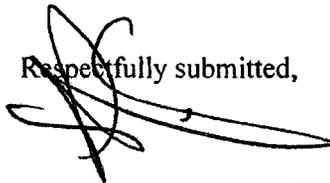
⁴¹ See *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Complaint (June 13, 2011) (alleging breach of NBCU Order’s news neighborhooding condition).

If, as it has suggested, the Commission believes that Section 616 is not only relevant to the competitive program marketplace but requires additional regulatory muscle,⁴² it should support those conclusions by insisting upon immediate compliance in this case, on the basis of the ALJ's clear finding of egregious discrimination, rather than permit Comcast to engage in further delay.

CONCLUSION

For the reasons stated above, Tennis Channel requests that the Commission order Comcast, as soon as is practicable, to comply with the Initial Decision by carrying Tennis Channel, Golf Channel, and Versus at the same levels of distribution, with similar channel placement, in accordance with the Presiding Judge's decision requiring parity in the terms and conditions of its carriage of those services.

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⁴² See, e.g., 2011 Rulemaking, 76 Fed. Reg. 60652, ¶¶ 4-8 (reviewing purpose of Section 616 and noting that "our current program carriage procedures are ineffective and in need of reform").

CERTIFICATE OF SERVICE

I, Leah E. Pogoriler, hereby certify that on this 13th day of January, 2012, I caused a true and correct copy of the foregoing Petition to Compel Comcast's Compliance with Initial Decision to be served by electronic mail and First Class mail upon:

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