

June 21, 2012

By ECFS and Email

William T. Lake
Chief, Media Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Bloomberg L.P. v. Comcast Cable Communications, LLC*,
MB Docket No. 11-104

Dear Mr. Lake:

Comcast Cable Communications, LLC (“Comcast”), pursuant to your request at the June 14, 2012 meeting with Comcast and Bloomberg L.P. (“Bloomberg”), hereby replies to Bloomberg’s submission of June 19, 2012.¹

As discussed herein, the Bureau should confirm that neither Bloomberg nor other independent news networks have the ability to impose duplicative SD and HD neighborhooding obligations on Comcast, and that Comcast may satisfy its neighborhooding obligation by ensuring that the network is included in *one* news neighborhood on a given lineup. To do otherwise, the Bureau would be giving Bloomberg and other independent news networks preferential carriage over non-independent news networks. Utilizing the definition of a news neighborhood adopted by the Bureau (i.e., four news networks within five channel positions), the fact is that *Comcast does not as a rule always carry even its affiliated news networks in a news neighborhood in both HD and SD*. For instance, in lineups in the 35 most populous Nielsen Designated Market Areas where Comcast has both an SD and an HD news neighborhood and carries both SD and HD feeds for MSNBC, CNBC, CNN, HLN, Fox News, and/or Fox Business News, Comcast carries: (1) MSNBC in only one news neighborhood in 60 percent of the lineups; (2) CNBC in only one news neighborhood in 19 percent of the lineups; (2) CNN in only one

¹ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Bloomberg L.P.’s Response to the Media Bureau’s Request for Additional Information Regarding High Definition News Neighborhoods (filed June 19, 2012) (“Bloomberg Response”).

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news neighborhood in 24 percent of the lineups; (3) HLN in only one news neighborhood in 47 percent of the lineups; (4) Fox News in only one news neighborhood in 21 percent of the lineups; and (5) Fox Business News in only one news neighborhood in 38 percent of the lineups.²

Bloomberg, by claiming that Comcast has a separate and duplicative neighborhooding obligation as to both its SD and HD feeds is clearly seeking to gain a competitive advantage for Bloomberg Television (“BTV”) as compared to non-independent news networks. In essence, Bloomberg’s theory would result in BTV being in two neighborhoods on every lineup with both an SD and an HD news neighborhood, even though CNBC and MSNBC and other major news networks are *not* so carried. The Commission did not adopt the Condition in order to give BTV that type of advantage, and the Bureau should not allow Bloomberg to exploit it to its competitive benefit.

In the event that the Bureau finds otherwise, it should stay that finding pending Commission action on the Applications for Review of the Bureau’s *Order*³ and clarify that the stay includes those channel lineups Bloomberg describes as “Bucket 2B.”⁴

I. The Condition Does Not Permit Independent News Networks to Insist on Multiple Neighborhooding.

Comcast demonstrated in its submission that there is nothing in the *Order*, the Condition,⁵ or the *Comcast-NBCUniversal Order* itself that grants an independent news network the ability to compel Comcast to reposition channels so both the network’s SD and HD feeds are included in news neighborhoods.⁶ To the contrary, the Condition is satisfied so long as an independent news network is included in one news neighborhood, because that accomplishes the goals the Commission sought to serve with this targeted, “narrowly tailored” condition. The Bureau holds that the Condition is intended “to prevent a specific harm resulting from the merger – that Comcast could neighborhood its newly affiliated news channels while isolating

² See Declaration of Mark A. Israel, at ¶ 4 (June 21, 2012) (“Israel Decl.”) (Attached).

³ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Memorandum Opinion and Order, DA 12-694 (rel. May 2, 2012) (the “*Order*”). *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Application for Review of Comcast Cable Communications, LLC (filed June 1, 2012) (“Comcast Application for Review”); *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Application for Review of Bloomberg, L.P. (filed June 1, 2012).

⁴ Bloomberg Response at 7-8, Ex. D.

⁵ *Applications of Comcast Corp., General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, 26 FCC Rcd 4238, 4358, Appendix A § III.2 (2011) (the “Condition”) (“*Comcast-NBCUniversal Order*”).

⁶ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Letter on Behalf of Comcast Cable Communications, LLC to William T. Lake, Chief, Media Bureau (filed June 19, 2012) (“Comcast Response”).

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independent news channels outside of any neighborhood.”⁷ Thus, if “Comcast neighborhoods its news channels and carries [BTV] in a news neighborhood, then [BTV] is not isolated.”⁸

To that end, the Condition and the *Order* expressly require Comcast to carry an independent news network in “a neighborhood” and “does not require Comcast to carry such channels in every news neighborhood or in a particular neighborhood of” the network’s choosing.⁹ As the Bureau put it, requiring Comcast to carry an independent news network in only a single news neighborhood:

. . . avoids duplication of programming in multiple news neighborhoods and provides Comcast flexibility to position its news neighborhoods in the way that will impose the least burdens on its headends (and the associated burdens that customers may experience as channel lineups change) while ensuring that independent news outlets are entitled to non-discriminatory carriage within a news neighborhood when Comcast carries news channels in neighborhoods.¹⁰

This reading of the Condition makes perfect sense, because the neighborhooding condition is a supplement to – not a wholesale substitute for – the program carriage rules.¹¹ Essentially, the Condition provides independent news networks with the opportunity to secure the ability to be in a news neighborhood rather than to be placed in an isolated channel position. As the Bureau recognizes, once an independent news network has the opportunity to be in one news neighborhood in a Comcast lineup, the concern motivating the Condition is satisfied.¹² While carriage in multiple news neighborhoods might theoretically be even *more* attractive to the news network, the Condition simply was not designed to ensure independent news networks optimal channel location anywhere and everywhere on Comcast’s lineups. The Condition instead represents a careful balance between the independent news networks’ interest in neighborhooding and the need to avoid undue burden to Comcast and disruption to viewers and innocent third-party networks.¹³ The Condition should therefore not be distorted to go even further and shoehorn in any channel placement interest a news network might have. That is

⁷ *Order* ¶ 21.

⁸ *Id.*

⁹ *Order* ¶ 20.

¹⁰ *Id.* ¶ 23 (citations omitted).

¹¹ *See Comcast-NBCUniversal Order*, 26 FCC 4287-88.

¹² *Order* ¶ 21.

¹³ *Id.* ¶ 20.

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especially the case given that an independent news network – even one that has received basic neighborhooding under the Condition – always has the ability to a claim under the program carriage rules, if it has a good faith complaint about other features of its carriage arrangements on Comcast’s networks being caused by unlawful discrimination on the basis of affiliation or non-affiliation. Thus, the issue now before the Bureau is *not* whether an independent news network could ever mount some claim above and beyond the basic neighborhooding Condition, but rather how expansive and elastic that Condition is, and whether it should be interpreted as a broad, multi-channel placement guarantee that extends to ensuring duplicative carriage in both an SD and an HD news neighborhood.¹⁴

For the Bureau to reverse course and read the Condition as ensuring that a news network with an SD and an HD feed is entitled to be “neighborhooded” at least twice on every single lineup with both an SD and an HD news neighborhood would significantly increase the burdens on Comcast, as well as the disruptions to its customers and innocent third-party networks.¹⁵ All this would occur with absolutely no indication anywhere on the record that the Commission intended such an outcome. To the contrary, reading the Condition to be satisfied so long as Comcast places an independent news network in at least *one* news neighborhood is consistent with the Commission’s intent.¹⁶

Furthermore, as noted above, reversing course in this way would also guarantee independent news networks *preferential* carriage rights as compared to other non-independent news networks, including those unaffiliated with Comcast such as Fox News and CNN. Indeed, Bloomberg’s contrary assertion notwithstanding,¹⁷ Comcast does not as a rule always carry MSNBC and CNBC, or other non-independent news networks in both SD and HD neighborhoods, but carries such networks in only one neighborhood (either in SD or often in HD). For instance, of the total lineups in which Comcast has both an SD and an HD neighborhood and carries both SD and HD feeds for MSNBC, CNBC, CNN, HLN, Fox News, and/or Fox Business News, Comcast carries: (1) MSNBC in only one news neighborhood in 60 percent of the lineups; (2) CNBC in only one news neighborhood in 19 percent of the lineups; (2) CNN in only one news neighborhood in 24 percent of the lineups; (3) HLN in only one news neighborhood in 47 percent of the lineups; (4) Fox News in only one news neighborhood in 21 percent of the lineups; and (5) Fox Business News in only one news neighborhood in 38 percent of the lineups.¹⁸ Thus, by claiming that Comcast has a separate neighborhooding obligation as to

¹⁴ Comcast Response at 5-9.

¹⁵ *Id.* at 8.

¹⁶ *Order* ¶ 21 (“If Comcast neighborhoods its news channels and carries Bloomberg Television in a news neighborhood, then Bloomberg Television is not isolated.”).

¹⁷ Bloomberg Response at 5.

¹⁸ *See* Israel Decl. at ¶ 4.

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both BTV's SD and HD feeds in 100 percent of the lineups in which Comcast will carry BTV in a news neighborhood, Bloomberg is clearly seeking to exploit the Condition so as to gain a competitive advantage for BTV as compared to non-independent news networks. In essence, Bloomberg's theory would result in BTV being in two news neighborhoods on every lineup with both an SD and an HD news neighborhood, even though non-independent networks such as MSNBC, CNBC, Fox News, and CNN are not. The Bureau should not interpret the Condition to give BTV such an advantage.

Bloomberg's Response does nothing to undercut these basic points. Bloomberg instead continues to cite to inapposite program access precedent and reiterates its arguments that its complaint was seeking "neighborhooding" for BTV's SD feed exclusively.¹⁹ Comcast has already demonstrated that Bloomberg's reliance on program access precedent is misplaced.²⁰ The simple fact that HD and SD feeds can be considered separately in a completely different context does not warrant affording Bloomberg with duplicative SD and HD "neighborhooding" under this unrelated Condition.²¹

As to the fact that Bloomberg's complaint presented evidence only with regard to SD, Comcast has already demonstrated that the scope and form of Bloomberg's complaint does not control here.²² Bloomberg's complaint was a case of first impression raising significant legal issues regarding how critical terms of the Condition are to be interpreted. The *Order* (and the Commission's decision on review) therefore will govern not only how Comcast carries BTV under the Condition, but also how Comcast may respond to requests from other independent news networks for carriage under the Condition going forward.²³ The scope of Bloomberg's complaint cannot change the meaning of the Condition.²⁴ Nor should the Bureau allow the compliance options available to Comcast to turn on the requesting network's artful pleading.²⁵

In this regard, Bloomberg's reliance on Comcast's arguments in the *Tennis Channel* proceeding is misplaced.²⁶ Comcast is arguing in that case that the Chief Administrative Law

¹⁹ Bloomberg Response at 2-7.

²⁰ Comcast Response at 10-12.

²¹ *Id.* at 12.

²² Comcast Response at 5, 9-10.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 10.

²⁶ Bloomberg Response at 4 (citing *The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, MB Docket No. 10-204, Comcast Exceptions to Initial Decision (filed Jan. 19, 2012) ("Comcast Exceptions")).

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Judge erred by ordering “‘equitable’ channel placement without (1) finding a channel-placement-related injury or (2) analyzing why that particular repositioning remedy would redress any Tennis Channel injury” and that such relief “goes far beyond redressing [the] supposed harm” to Tennis Channel.²⁷ The issue in that case is focused on ensuring that the relief redresses the alleged harm at issue. In fact, Comcast’s position here is *consistent* with that same concern. As the Bureau has ruled here, the relief necessary to remedy any potential harm to Bloomberg is to carry BTV in one news neighborhood because such neighborhooding will ensure that BTV is not isolated outside of a news neighborhood, which was the concern animating the Commission’s adoption of the Condition in the first place.²⁸ Consistent with its position in *Tennis Channel*, Comcast is therefore seeking to ensure that Bloomberg is not granted *additional* relief, above and beyond that which is necessary to redress the potential harm to Bloomberg, by securing an entitlement to be carried in at least *two* news neighborhoods (both SD *and* HD) – relief it has all but announced it will exercise by bringing a future request relating to its HD feed. Bloomberg may have pled relief as to one of its feeds now with the hope of pleading for that same relief for a second feed later, but the Bureau should hold that a “feed-specific” neighborhooding obligation would distort the Condition and expand the relief it is designed to ensure.

This analysis is unaffected by Bloomberg’s effort to portray Comcast as having conceded Bloomberg’s point by submitting an SD-specific analysis in response to the Complaint in this proceeding. To be sure, as Bloomberg notes, neither of Comcast’s expert witnesses included HD networks in their analyses.²⁹ But Comcast and its experts limited their analyses to SD channel placements to ensure that their analyses were fairly comparable to Bloomberg’s analyses.³⁰ That approach was also reasonable because, at that time, Comcast did not widely distribute BTV’s HD feed – which it now does, to millions of subscribers.³¹ And in all events, Comcast expressly reserved its rights to address HD neighborhooding.³²

Bloomberg nevertheless goes on to assert that the fact that the Bureau relied upon these analyses, which do not include HD networks, “made it clear that . . . Comcast cannot fulfill its

²⁷ Comcast Exceptions at 38.

²⁸ *Supra* note 16.

²⁹ Bloomberg Response at 3.

³⁰ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Answer of Comcast Cable Communications, LLC at n.71 (filed July 27, 2011) (“Answer”). Comcast also used data provided by Tribune Media Services (“TMS”) for purposes of preparing its Answer for similar reasons. TMS data, however, is not always entirely accurate with regard to individual Comcast lineups, so Comcast gathered lineup data from its internal sources for purposes of its May 22 submission. *See* Bloomberg Response at 7, n.31.

³¹ Comcast Response at n.26.

³² *See id.*

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neighborhooding requirements by placing BTV in an HD neighborhood.”³³ That conclusion is simply a non-sequitor. Those analyses were not a compliance plan, but a test and refutation of Bloomberg’s theory. When Comcast submitted its channel listings as the first step in compliance on May 22, 2012, Comcast *did* include HD neighborhoods (including lineups that had *only* HD neighborhoods).³⁴ Comcast, however, did not signal an intent to carry BTV’s SD feed in an HD neighborhood, as Bloomberg suggests.³⁵ To the contrary, Comcast has indicated that it would only carry BTV’s HD feed in an HD neighborhood.³⁶

Bloomberg also asserts that “Comcast’s Answer specifically said Bloomberg could not ‘seek to include BTV in an HD neighborhood.’”³⁷ But that out-of-context language reflects nothing more than the fact that BTV was barely carried in HD at that time, and that there accordingly was “no basis for Bloomberg to seek to include BTV in an HD ‘neighborhood.’”³⁸ As Comcast has recognized, it would not be appropriate to place an SD feed into an HD neighborhood. But Comcast reserved its rights to address HD neighborhoods in subsequent submissions³⁹ – a reservation that proved prescient, because Comcast’s broad launch of BTV’s HD feed now makes placement of BTV in an HD news neighborhood a relevant option.⁴⁰

³³ Bloomberg Response at 4-5.

³⁴ Comcast notes, however, that Bloomberg delayed raising any concerns regarding Comcast’s May 22 report for almost two weeks, when it filed its Application for Review.

³⁵ Bloomberg Response at 7.

³⁶ See Comcast Response at 3; see also *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Motion for Partial Extension of Time, at n.3 (filed June 1, 2012) (“In a few of these lineups, Comcast needs more time in order to complete capacity upgrades that will allow it to implement a launch of BTV in high definition on those lineups that will result in compliance with the *Order*, and that cannot be accomplished by July 1.”).

³⁷ Bloomberg Response at 3.

³⁸ Answer at n.71.

³⁹ *Id.*

⁴⁰ Bloomberg also asserts that Comcast admits, in its Surreply, that SD and HD feeds are “distinct services.” Bloomberg Response at 5 (quoting *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Surreply of Comcast Cable Communications, LLC, at 13 (filed Sept. 27, 2011) (“Surreply”).). Again, Bloomberg mischaracterizes Comcast’s point. The language Bloomberg quotes is taken from a discussion regarding whether four news networks within five channel positions can constitute a significant number or percentage of news networks for purposes of defining news neighborhoods. Surreply at 12-13. This discussion was a refutation of Bloomberg’s definition of a news neighborhood and did not address the remedy available to Bloomberg under the Condition.

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II. Stay of the Bureau's Order and Comcast's Compliance Plan

The parties have discussed with the Bureau a compromise proposal for addressing Comcast's Motion for Expedited Stay.⁴¹ Under this compromise: (1) the parties agree to the Bureau staying the *Order*; (2) the Bureau will rule on the question of HD neighborhoods discussed above and allow the parties to supplement their Applications for Review to bring this issue to the Commission for review; and (3) Comcast will proceed with moving BTV into news neighborhoods in two sub-sets of channel lineups and will complete these moves according to the schedule set out in Comcast's submission.⁴² In this regard, and after further review of the data, Comcast has concluded that it is in a position to carry BTV on all 126 of the lineups identified by Bloomberg as "Bucket 1" channel lineups (i.e., in lineups with an SD news neighborhood below channel 100 that has a vacancy and includes CNBC) by July 1, 2012. By July 1, Comcast will also carry BTV on six additional lineups in an SD news neighborhood below channel 100 that has a vacancy and includes CNBC.⁴³

In the event that the Bureau concludes that the Condition entitles independent news networks to duplicative "neighborhooding" in both SD and HD, it should stay that ruling pending Commission action on the parties' Applications for Review as supplemented to address this issue. In addition, it should confirm that this stay extends to those channel lineups Bloomberg describes as "Bucket 2B" lineups.⁴⁴

As Comcast discussed in its Stay Motion, the ability to place BTV in an HD news neighborhood is critical to Comcast's ability to neighborhood BTV while minimizing to the extent practicable the disruption to Comcast subscribers and innocent third-party networks.⁴⁵ Placing BTV in an HD neighborhood (in lineups carrying its HD feed and an HD slot is available) is frequently the least disruptive option available because HD channel lineups are

⁴¹ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Motion for Expedited Stay (filed June 8, 2012) ("Stay Motion").

⁴² Comcast Response at 4-5.

⁴³ These six additional lineups have an HD news neighborhood with a vacancy. *See infra* note 44.

⁴⁴ Bloomberg Response at 7-8, Ex. D. As Comcast understands it, the Bucket 2B lineups are channel lineups with exactly one SD news neighborhood that (1) do not have a channel vacancy within that SD news neighborhood, and (2) have no networks that Bloomberg asserts should not be characterized as news networks, and include at least one HD news neighborhood in that lineup. Using this definition, Comcast calculates that there are 59 channel lineups in Bucket 2B, not 65 as Bloomberg calculates. *Id.* It appears from Comcast's analysis that the discrepancy arises from the fact that Bloomberg includes six lineups in its Bucket 2B that have an SD news neighborhood below channel 100 that has a channel vacancy and includes CNBC. Comcast has already agreed to relocate BTV on those six lineups by July 1, 2012, leaving 59 lineups in Bucket 2B. *See supra* note 43.

⁴⁵ Stay Motion at 10, 17.

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typically in higher channel positions that are often more capacious and less settled from a consumer expectations perspective than their SD counterparts (especially those lineups below channel 100).⁴⁶ In addition, as Comcast noted previously, CNBC is typically included in these HD neighborhoods, which is consistent with Bloomberg's stated preference for being placed near CNBC.⁴⁷ Further, Comcast believes that HD better reaches BTV's target demographic, which tends to be affluent consumers who have already adopted HD technology.⁴⁸ Finally, as Comcast plans to leave BTV's existing SD channel in place, this approach would provide BTV with this very attractive neighborhooding option while ensuring that there is no disruption to any of BTV's viewers who expect to find the network at its existing SD channel position.⁴⁹

For these reasons, Comcast planned to comply with the *Order* by placing BTV in an HD news neighborhood in approximately 140 lineups,⁵⁰ which include the lineups Bloomberg describes as Bucket 2B lineups (59 lineups as calculated by Comcast). Removing the HD neighborhood as a compliance option would force Comcast to move BTV to an SD lineup below channel position 100 on many of these lineups, resulting in even more interference with Comcast's channel lineups, compelling numerous additional relocations of networks in the 1-99 channel range, where disruption to subscribers and other programming networks is the most acute.⁵¹ This result would likewise mean that future requests under the Condition will also have to be accommodated to a significant extent within the 1-99 channel range, which will put increasing pressure on this limited space and force serial, disruptive relocations of other networks. Such a result would run directly counter to the Commission's intent that the Condition be "narrowly tailored" in order "to limit major channel realignments and the cost and customer disruptions associated with those realignments."⁵² The Bureau should therefore stay the effectiveness of any such ruling to prevent Comcast from having to "undertake multiple channel realignments" and "avoid potential disruption to consumers and any affected third-party programmers"⁵³ until the Commission rules on the Applications for Review.

⁴⁶ *Id.*

⁴⁷ Comcast Response at 7.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Stay Motion at 10.

⁵¹ Comcast Application for Review at 15; Stay Motion at 10, 17.

⁵² *Order* ¶ 21.

⁵³ *The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, MB Docket No. 10-204, Order, FCC 12-50, ¶ 5 (rel. May 14, 2012).

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III. Conclusion

For the reasons stated above, the Bureau should stay the *Order* subject to the parties' voluntary agreement to proceed as discussed above. It should also confirm that neither Bloomberg nor other independent news networks have the ability to impose duplicative SD and HD neighborhooding obligations on Comcast, and that Comcast may comply with the neighborhooding Condition by placing a news network in *one* news neighborhood on a lineup. To the extent that the Bureau finds otherwise, it should stay that finding and extend the stay to encompass the channel lineups Bloomberg describes as Bucket 2B lineups.

Sincerely,

/s/ David H. Solomon

David H. Solomon
J. Wade Lindsay
Counsel for Comcast Cable Communications, LLC

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Complaint of)	
)	
Bloomberg L.P.)	MB Docket No. 11-104
)	
v.)	
)	
Comcast Cable Communications)	

Declaration of Mark A. Israel
June 21, 2012

1. I am Mark A. Israel. I am a Senior Vice President and Managing Director in the Washington, DC office of Compass Lexecon, LLC, an economic consulting firm.
2. I submitted three previous Declarations in this matter.
 - In my Declaration of July 27, 2011, I analyzed channel lineup data produced by TMS to compute the number of news networks and possible news neighborhoods carried on Comcast's and other MVPDs' headends.¹
 - In my Supplemental Declaration of September 27, 2011, I analyzed channel lineup data produced by Comcast to determine the extent of changes to channel lineups occurring between June 2010 and June 2011, particularly below channel 100.²
 - In my Declaration of June 8, 2012, I analyzed channel lineup data produced by Comcast to determine the potential effects of a ruling on Bloomberg's Application for Review.^{3,4}
3. I have been asked by counsel for Comcast to analyze Comcast's channel lineup data to determine the extent to which Comcast currently carries CNBC, MSNBC, CNN, Fox News, Fox Business, and HLN (formerly CNN Headline News) in both SD and HD news neighborhoods.⁵
4. I restrict my analysis to the set of lineups containing at least one SD news neighborhood and at least one HD news neighborhood. Among these lineups, I find that:
 - CNBC is carried in at least one SD news neighborhood *and* at least one HD news neighborhood in 81% of such lineups, and it is carried in only one type (i.e., SD or often HD) of news neighborhood in 19% of such lineups.⁶
 - MSNBC is carried in at least one SD news neighborhood *and* at least one HD news neighborhood in 38% of such lineups, and it is carried in only one type (i.e., SD or often HD) of news neighborhood in 60% of such lineups.⁷

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

² *In re Bloomberg L.P. v. Comcast Cable Communications, LLC*, Supplemental Declaration of Mark A. Israel, MB Docket 11-104, September 27, 2011.

³ *In re Bloomberg L.P. v. Comcast Cable Communications, LLC*, Declaration of Mark A. Israel, MB Docket 11-104, June 8, 2012.

⁴ *In re Bloomberg L.P. v. Comcast Cable Communications, LLC*, Bloomberg Application for Review, MB 11-104, June 1, 2012 (hereinafter "Application for Review").

⁵ I restrict the data to the 35 most-populous Nielsen Designated Market Areas ("DMAs") in the United States. I identify news networks and news neighborhoods in the same manner as described in my Declaration of June 8, 2012. I continue to treat Current TV, BBC World News, and MHz Worldview as news networks, and I continue to use the definition of a news neighborhood as four news networks out of five adjacent filled channel positions.

⁶ CNBC is carried in no neighborhoods in 1% of lineups (the total of shares exceeds 100% due to rounding).

⁷ MSNBC is carried in no neighborhoods in 2% of lineups.

- CNN is carried in at least one SD news neighborhood *and* at least one HD news neighborhood in 76% of such lineups, and it is carried in only one type (i.e., SD or often HD) of news neighborhood in 24% of such lineups.⁸
- Fox News is carried in at least one SD news neighborhood *and* at least one HD news neighborhood in 79% of such lineups, and it is carried in only one type (i.e., SD or often HD) of news neighborhood in 21% of such lineups.⁹
- Fox Business is carried in at least one SD news neighborhood *and* at least one HD news neighborhood in 56% of such lineups, and it is carried in only one type (i.e., SD or often HD) of news neighborhood in 38% of such lineups.¹⁰
- HLN (formerly CNN Headline News) is carried in at least one SD news neighborhood *and* at least one HD news neighborhood in 52% of such lineups, and it is carried in only one type (i.e., SD or often HD) of news neighborhood in 47% of such lineups.¹¹

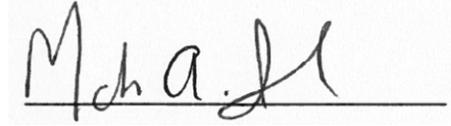
⁸ CNN is carried in no neighborhoods in 0% of lineups.

⁹ Fox News is carried in no neighborhoods in 0% of lineups.

¹⁰ Fox Business is carried in no neighborhoods in 6% of lineups.

¹¹ HLN is carried in no neighborhoods in 0% of lineups.

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

A handwritten signature in black ink, appearing to read "Mark A. Israel", is written over a solid horizontal line. The signature is cursive and somewhat stylized.

Mark A. Israel

June 21, 2012

Washington, DC

Appendix A

Mark A. Israel
Senior Vice President and Managing Director

February 2012

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AREAS OF SPECIALIZATION

- Industrial organization economics
- Econometric analyses, particularly involving sophisticated modeling on large datasets
- Competitive analysis of horizontal and vertical mergers, including merger simulation techniques
- Economic and econometric analysis of class certification in price fixing and other matters
- Economic and econometric analysis of damages in antitrust and intellectual property matters
- Econometric analyses of dynamic consumer choice models
- Econometric analyses of asymmetric information, risk, and insurance

EDUCATION

Ph.D., in Economics, STANFORD UNIVERSITY, June 2001.

M.A., in Economics, UNIVERSITY OF WISCONSIN-MADISON, August 1992

B.A., in Economics, ILLINOIS WESLEYAN UNIVERSITY, Summa Cum Laude, May 1991.

PROFESSIONAL EXPERIENCE

Compass Lexecon, Chicago, Illinois and Washington, DC. Senior Vice President and Managing Director, Washington DC Office, November 2010 – Present; Senior Vice President, January 2009 – November 2010; Vice President, January 2008-December 2008; Economist, January 2006 – December 2007.

Kellogg School of Management, Northwestern University, Evanston, Illinois. Assistant Professor of Management and Strategy, September 2000 – June 2007; Visiting Associate Professor of Management and Strategy, September 2007 – August 2008.

State Farm Insurance, Bloomington, Illinois Research Administrator, August 1992 – August 1995.

Illinois Wesleyan University, Bloomington, Illinois, Visiting Professor, January – June 1993.

EXPERT REPORTS & AFFIDAVITS

Expert Report of Robert Willig, Mark Israel, Bryan Keating, and Jonathan Orszag, "Response to Supplementary Comments of Hubert Horan," Docket DOT-OST-2009-1055, October 22, 2010.

Expert Report of Robert Willig, Mark Israel, Bryan Keating, and Jonathan Orszag, "Measuring Consumer Benefits from Antitrust Immunity for Delta Air Lines and Virgin Blue Carriers," Docket DOT-OST-2009-1055, October 13, 2010.

Expert Report of Mark Israel and Michael L. Katz, "Economic Analysis of the Proposed Comcast-NBCU-GE Transaction," Federal Communications Commission, MB Docket 10-56, July 20, 2010.

Expert Report of Mark Israel and Michael L. Katz, "The Comcast/NBCU Transaction and Online Video Distribution," Federal Communications Commission, MB Docket 10-56, May 4, 2010.

Expert Report of Mark Israel and Michael L. Katz, "Application of the Commission Staff Model of Vertical Foreclosure to the Proposed Comcast-NBCU Transaction," Federal Communications Commission, MB Docket 10-56, February 26, 2010.

Expert Report of Robert Willig, Mark Israel, and Bryan Keating, "Competitive Effects of Airline Antitrust Immunity: Response of Robert Willig, Mark Israel, and Bryan Keating" in Docket DOT-OST-2008-0252, January 11, 2010

Affidavit of Dr. Mark A. Israel on Class Certification in Re: Puerto Rican Cabotage Antitrust Litigation, in the United States District Court for the District of Puerto Rico, MDL Docket No. 3:08-md-1960 (DRD), December 10, 2009

Expert Report of Robert Willig, Mark Israel, and Bryan Keating, "Competitive Effects of Airline Antitrust Immunity" in Docket DOT-OST-2008-0252, September 8, 2009

Expert Report and Supplemental Expert Report of Dennis W. Carlton and Mark Israel in Re: Toys "R" Us-Delaware, Inc., and Goeffrey Inc. v. Chase Bank USA N.A. in American Arbitration Association New York, New York, Commercial Arbitrations No. 13-148-02432-08, February 27, 2009 (Expert Report), March 20, 2009 (Supplemental Expert Report)

Paper commissioned by National Collegiate Athletic Association (with Jonathan Orszag), "The Empirical Effects of Collegiate Athletics: An Update Based on 2004-2007 Data," February 2009

Expert Reports of James Levinsohn and Mark Israel in Re: 2006 NPM Adjustment Proceeding pursuant to Master Settlement Agreement, October 6, 2008 (Expert Report), January 16, 2009 (Expert Report), March 10, 2009 (Expert Report)

SELECTED OTHER CONSULTING ENGAGEMENTS DURING THE PAST 5 YEARS

Appearance in FCC Workshop of Economists, Ex Parte Meeting, WT Docket No. 11-65, July 15, 2011, in regard to ATT/T-Mobile transaction, July 2011

Econometric analysis of air traffic at major US airports, 2011

Assessment of the competitive impact of low-cost-carrier competition in Washington DC and New York airports, 2011

Analysis of consumer benefits and lack of competitive harm from two international airline alliances, 2010

Development of merger simulation model for a vertical merger in the consumer beverages industry, 2009

Econometric analysis of price changes in the context of analyzing class certification of high technology products, 2008-2009

Development of econometric model to forecast pharmaceutical expenditures, 2009

Economic and econometric analysis of competition between airlines and potential competitive effects in private litigation on a major airline merger, 2008

Assessment of market definition and antitrust issues for a potential airline merger, 2008

Development and implementation of a Monte Carlo simulation model to assess risk and return on investments for a large not-for-profit charitable foundation, 2008

Econometric measurement of the importance of network effects in credit cards in the context of measuring damages to a major credit card issuer in litigation, 2007-8

Economic and econometric analysis of competition in textbooks, demonstrating lack of competitive harm from a merger between two textbook publishers, 2007

Economic and econometric analysis of competition between financial derivatives and exchanges, demonstrating lack of competitive harm from merger of two exchanges, 2006-2007

Analysis of price adjustments in contracts for purchase of pharmaceuticals to demonstrate lack of common classwide impact in class certification proceeding, 2006.

STRATEGIC CONSULTING ENGAGEMENTS

Ingram Barge Company, Nashville, TN, 2006-2007. Provided analysis and guidance in development of strategic plan. Developed game theoretical framework to assist in investment and information management decisions.

PUBLISHED ARTICLES

“Proper Treatment of Buyer Power in Merger Review,” (with Dennis W. Carlton), *Review of Industrial Organization*, July 2011.

“Response to Gopal Das Varma’s Market Definition, Upward Pricing Pressure, and the Role of the Courts: A Response to Carlton and Israel (with Dennis W. Carlton), *The Antitrust Source*, December 2010.

“Will the New Guidelines Clarify or Obscure Antitrust Policy?” (with Dennis W. Carlton), *The Antitrust Source*, October 2010.

“Should Competition Policy Prohibit Price Discrimination?” (with Dennis W. Carlton), *Global Competition Review*, 2009.

“Services as Experience Goods: an Empirical Examination of Consumer Learning in Automobile Insurance,” *The American Economic Review*, December 2005.

“Tenure Dependence in Consumer-Firm Relationships: an Empirical Analysis of Consumer Departures from Automobile Insurance Firms,” *The Rand Journal of Economics*, Spring 2005.

“The Impact of Youth Characteristics and Experiences on Transitions Out of Poverty,” with Michael Seeborg, *The Journal of Socio-Economics*, 1998,

“Racial Differences in Adult Labor Force Transition Trends,” with Michael Seeborg, *The Journal of Economics*, 1994.

RESEARCH IN PROGRESS

“Do We Drive More Safely When Accidents are More Expensive? Identifying Moral Hazard from Experience Rating Schemes.”

“Who Can See the Future? Information and Consumer Reactions to Future Price Discounts.”

“Where is All the Hidden Information Hiding? Evidence from Automobile Insurance Panel Data.”

“Foundations of State Insurance Regulation: An Analysis of Motivations for the McCarran-Ferguson Act.”

GRANTS AND HONORS

Searle Fund for Policy Research Grant, 2004-2006, for “An Empirical Examination of Asymmetric Information in Insurance Markets.”

Kellogg School of Management Chairs’ Core Course Teaching Award, 2003 & 2005.

Bradley Dissertation Fellowship, Stanford University, 1999-2000.

Stanford University, Outstanding Second Year Paper Prize, 1997.

University of Wisconsin, Madison, Outstanding First Year Paper Prize, 1992.

SELECTED PRESENTATIONS

American Bar Association Section of Antitrust Law, Go Low or Go Home! Monopsony a Problem?, Panelist, March 2012.

Federal Communications Bar Association Transactional Committee CLE Seminar, The FCC’s Approach to Analyzing Vertical Mergers, Panelist, October 2011.

The Technology Policy Institute Aspen Forum, Watching the Future: The Economic Implications of Online Video, Panelist, August, 2011.

The American Bar Association Forum on Air & Space Law, 2011 Update Conference, Antitrust Issues: What’s on the Horizon for the Industry, Panelist.

American Bar Association Section of Antitrust Law, Antitrust in the Airline Industry Panelist, September, 2010.

Northwestern University/University of Chicago Industrial Organization/Marketing Conference, 2005.

National Bureau of Economic Research, Winter Industrial Organization Meetings, 2004.

CSIO Toulouse Industrial Organization Conference, Paper Presentation, 2004

American Risk and Insurance Association Annual Meetings, Paper Presentation, 2004

International Industrial Organization, Paper Presentation, 2004

Moderator and Chair, Kellogg School of Management Technology Conference, 2002 & 2004.

SELECTED ACADEMIC SEMINARS

Yale University
University of Arizona
Washington University, St. Louis
University of Pennsylvania
University of Toronto
UCLA
University of Wisconsin-Madison
Massachusetts Institute of Technology
Harvard University
University of Chicago
Columbia University
University of Texas
Carnegie Mellon University
University of California, Irvine
University of California, San Diego

REFEREE FOR ACADEMIC JOURNALS

American Economic Review
The Journal of Industrial Economics
The Rand Journal of Economics
Journal of the European Economic Association
The Review of Economic Studies
The Review of Economics and Statistics
Journal of Risk and Insurance