

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
<b>BLOOMBERG L.P.</b>	)	MB Docket No. 11-104
Complainant	)	
	)	
v.	)	
	)	
<b>COMCAST CABLE COMMUNICATIONS,</b>	)	
<b>LLC</b>	)	
Defendant	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 2, 2012**

**Released: May 2, 2012**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. In this Order, we grant in part a complaint filed by Bloomberg L.P. (“Bloomberg”) claiming that its 24-hour business news channel, Bloomberg Television, is an “independent news channel” covered by the “news neighborhooding” condition adopted in the *Comcast-NBCU Order*. We construe the terms of that condition and direct Comcast Cable Communications, LLC (“Comcast”) to carry Bloomberg consistent with the requirements of this order.<sup>1</sup>

2. The news neighborhooding condition requires Comcast to carry all independent news and business news channels in a neighborhood if it places any such programming in a neighborhood of similar programming. We conclude (i) that the condition applies to the channel lineups existing on Comcast’s systems at the time the *Comcast-NBCU Order* was adopted as well as future channel lineups; (ii) that four news or business news channels within any five adjacent channel positions qualifies as a “significant number or percentage of news and/or business news channels” and therefore constitutes a neighborhood for purposes of the news neighborhooding condition; (iii) that the term “news channel” refers to a channel carrying general interest news programming; and (iv) that, if a Comcast system has more than one news neighborhood, the condition obligates Comcast to carry independent news and business news channels in at least one such neighborhood, but not in all news neighborhoods, in a particular neighborhood, or in one consolidated news neighborhood. Moreover, we find that Comcast does place a significant number of news and business news channels substantially adjacent to one another in many systems’ channel lineups, forming news neighborhoods, and that Bloomberg Television is not included in such neighborhoods on some systems. Accordingly we grant Bloomberg, L.P.’s (“Bloomberg”) complaint in part, direct Comcast to carry Bloomberg in a news neighborhood on certain headends, and direct Comcast to file

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<sup>1</sup> In the *Comcast-NBCU Order*, the Commission granted the application of Comcast, General Electric Company, and NBC Universal, Inc. to assign and transfer control of licenses from General Electric Company to Comcast. *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, 26 FCC Rcd 4238 (2011) (“*Comcast-NBCU Order*”).

more information to confirm the facts necessary to determine whether relief is appropriate on other headends.<sup>2</sup>

## II. BACKGROUND

3. The Commission approved with conditions the assignment and transfer of broadcast, satellite, and other radio licenses from the General Electric Company to Comcast on January 18, 2011.<sup>3</sup> At that time Comcast agreed to conditions to ensure that the transaction served the public interest, including the news neighborhooding condition at issue in Bloomberg's complaint. In adopting the news neighborhooding condition, the Commission declined to require Comcast to carry its programming in neighborhoods of similar programming, but instead adopted a condition intended to prevent Comcast from discriminating against unaffiliated news networks:

If Comcast now or in the future carries news and/or business news channels in a neighborhood, defined as placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup, Comcast must carry all independent news and business news channels in that neighborhood.<sup>4</sup>

The Commission defined an "independent news channel" as

a video programming network that is (i) unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries, (ii) unaffiliated with one of the top 15 programming networks, as measured by annual revenues, and (iii) whose programming is focused on public affairs, business, or local news reporting and analysis during the hours from 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone.<sup>5</sup>

The Commission called this "narrowly tailored" condition appropriate "in accordance with the special importance of news programming to the public interest."<sup>6</sup> For procedural purposes, the Commission directed aggrieved parties to follow the Commission's program carriage complaint procedures found in Section 76.1302 of our rules.<sup>7</sup>

4. Bloomberg filed its Complaint on June 13, 2011.<sup>8</sup> Bloomberg claims that its 24-hour business news channel, Bloomberg Television, is an "independent news channel" as the term is defined in the *Comcast-NBCU Order*.<sup>9</sup> Bloomberg also asserts that it met Section 76.1302's pre-filing requirements.

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<sup>2</sup> The condition references the term "system's channel lineup", but Bloomberg's complaint analyzes channel lineups on a headend-by-headend basis. See Complaint at Exhibit H. Comcast did not challenge Bloomberg's analysis of the lineups on a headend-by-headend basis, and therefore we presume that the system/headend distinction in this context is irrelevant, perhaps because the systems at issue are single-headend systems.

<sup>3</sup> *Comcast-NBCU Order*, 26 FCC Rcd 4238.

<sup>4</sup> *Id.* at 4358 (App. A, Sec. III.2).

<sup>5</sup> *Id.* at 4287, n.292.

<sup>6</sup> *Id.* at 4287, ¶ 122.

<sup>7</sup> *Id.* at 4359 (App. A, Sec. III.4).

<sup>8</sup> Section 76.1302 of the Commission's rules requires that before filing a carriage complaint, complainants must "notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission . . . so that its recipient(s) can determine the specific nature of the potential complaint." The rule also requires a potential complainant to allow a minimum of ten days for the potential defendant to respond before filing a complaint with the Commission. 47 C.F.R. § 76.1302(b).

<sup>9</sup> Complaint at 21, ¶ 80.

It reports in the Complaint that on May 26, 2011 its attorneys sent a letter to Comcast stating that Bloomberg intended to file a complaint<sup>10</sup> and received a response from Comcast's General Counsel on June 6, 2011, stating that Comcast disagreed with Bloomberg's interpretation of the condition, and encouraging Bloomberg to engage in commercial negotiation rather than filing a complaint.<sup>11</sup> Bloomberg requests that we order Comcast to move Bloomberg Television to any grouping containing four news channels within a cluster of five adjacent channel positions on any headend located in the top 35 Nielsen Designated Market Areas ("DMAs").<sup>12</sup> Alternatively, Bloomberg would agree to be relocated to any cluster of channels that contains CNBC, which was Bloomberg's "original objective in pursuing a neighborhooding condition"<sup>13</sup> because Bloomberg wishes to have Bloomberg Television located near "the most watched and lucrative news channels."<sup>14</sup> Comcast filed an Answer on July 27, 2011<sup>15</sup> that (i) challenges that Bloomberg's definition of a news neighborhood,<sup>16</sup> (ii) claims that Bloomberg's interpretation of the news neighborhooding is not consistent with the "Commission's intent to minimize disruptions to consumers and other programming networks,"<sup>17</sup> (iii) asserts that the news neighborhooding condition is "prospective in nature,"<sup>18</sup> and (iv) recommends that if the Commission does not deny the complaint, that it designate the complaint for hearing because the complaint raises many complex questions.<sup>19</sup> Bloomberg filed its Reply on August 30, 2011.<sup>20</sup> Comcast subsequently filed a Motion for Leave to file a Surreply and a Surreply on September 28, 2011. Bloomberg opposed Comcast's Motion on October 7, 2011, and Comcast filed a Reply to Bloomberg's Opposition on October 17, 2011.<sup>21</sup>

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<sup>10</sup> *Id.* at 6, ¶ 12, Exhibit B.

<sup>11</sup> *Id.* at 6-7, ¶ 12, Exhibit C.

<sup>12</sup> *Id.* at 22.

<sup>13</sup> Reply at 48. Bloomberg proposed three remedies throughout this proceeding. Initially, Bloomberg requested that Comcast carry Bloomberg Television "in any channel grouping containing at least four news channels within a block of five adjacent channels positions." Complaint at 22. Then Bloomberg suggested that if a Comcast headend contains two neighborhoods, then Comcast must carry Bloomberg Television "in both such neighborhoods." Reply at 47. Finally Bloomberg stated that it "is content to be carried only in the neighborhood that carries CNBC," so long as Comcast carries Bloomberg Television in every neighborhood that contains CNBC. Reply at 48.

<sup>14</sup> *Id.* at 48-49.

<sup>15</sup> On June 28, 2011, we granted Comcast a fourteen-day extension to file an Answer to Bloomberg's Complaint. *See Bloomberg L.P., v. Comcast Cable Communications, LLC*, 26 FCC Rcd 9300 (2011).

<sup>16</sup> Answer at 21-36.

<sup>17</sup> *Id.* at 36-44.

<sup>18</sup> *Id.* at 44-50.

<sup>19</sup> *Id.* at 51-52.

<sup>20</sup> On August 2, 2011, we granted Bloomberg a fourteen-day extension to file a Reply to Comcast's Answer. *See* Letter from Steven Broecker, Senior Deputy Chief, Media Bureau, Federal Communications Commission, to Stephen Díaz Gavin, Counsel to Bloomberg L.P., Arthur Burke, Counsel to Comcast, Inc., and David Solomon, Counsel to Comcast, Inc., August 2, 2011.

<sup>21</sup> Pleadings in excess of the usual three (Complaint, Answer and Reply) are allowed only on a showing of extraordinary circumstances. 47 C.F.R. § 76.7(d). We find that Comcast has shown extraordinary circumstances. Bloomberg's Reply is over 80 pages long and attaches seven expert declarations. The surreply is brief and is limited to refutations of specific claims that Bloomberg made for the first time in its Reply. Accordingly, we grant the request for leave to file the surreply.

### III. DISCUSSION

5. We find that Bloomberg has demonstrated that on at least some of its systems Comcast neighborhoods news channels on certain headends and does not carry Bloomberg Television in a neighborhood on those headends, as required by the news neighborhooding condition of the *Comcast-NBCU Order*. As we detail below, we conclude that: (i) the condition is not limited to channel lineups constructed after approval of the transaction, but also applies to lineups present on Comcast's systems at the time the *Comcast-NBCU Order* was released as well as future lineups; (ii) a grouping containing four news or business news channels within a cluster of five adjacent channel positions qualifies as a "significant number of news or business news channels" for purposes of the news neighborhooding condition; (iii) the term "news channel" in the condition refers to general interest news programming and not to specialty news channels dedicated to a sub-genre of news programming (such as channels devoted to sports or weather news) or Public, Educational, and Governmental access channels ("PEG"); and (iv) for purposes of compliance with the condition, Comcast is obligated to carry an independent news programming channel in at least one news neighborhood, but is not required to carry a particular network channel in all news neighborhoods, or in a particular neighborhood, or in one consolidated news neighborhood.

6. Accordingly, with respect to headends in the top-35 DMAs, we direct Comcast to: (i) within sixty days of the release of this Order, carry Bloomberg Television in a news neighborhood on any headend that carries Bloomberg Television, has a news neighborhood as defined herein, and does not include Bloomberg Television within a news neighborhood; (ii) within 14 business days after the release of this Order, provide to Bloomberg and the Commission a list of those headends that are subject to the requirements of subparagraph (i); and (iii) within 14 business days after the release of this Order, provide to Bloomberg and the Commission channel lineup information about any headend listed in response to subparagraph (ii) that already carries Bloomberg Television within a news neighborhood. The Commission will address separately on a case-by-case basis any disputes between Comcast and Bloomberg involving whether a specific channel qualifies as a "news channel," which may alter the determination of whether Bloomberg Television is carried within an existing news neighborhood.<sup>22</sup>

#### A. Applicability to Existing Lineups

7. Bloomberg argues that the news neighborhooding condition "applies to any news neighborhood that Comcast carried as of the date of the [*Comcast-NBCU Order*] or any other news neighborhood that Comcast carries after that date."<sup>23</sup> Bloomberg bases this argument on the language of the condition, which makes the neighborhooding requirement applicable if Comcast "*now or in the future* carries news and/or business news channels in a neighborhood."<sup>24</sup> As Bloomberg explains, Webster's Dictionary defines "now" to mean "at the present time or moment" and "under the present circumstances."<sup>25</sup> Because the news channel groupings existed when the Commission adopted the *Comcast-NBCU Order*, Bloomberg contends that the channel groupings meet the condition's temporal requirement. Comcast argues that the neighborhooding condition was solely "prospective in nature."<sup>26</sup>

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<sup>22</sup> In other words, the Commission will settle any dispute in which Comcast carries Bloomberg Television in a grouping of five channels, three of which both Comcast and Bloomberg classify as "news channels," along with another channel that Comcast classifies as news but Bloomberg does not.

<sup>23</sup> Complaint at 21, ¶ 79.

<sup>24</sup> *Id.*; *Comcast-NBCU Order*, 26 FCC Rcd at 4358 (App. A, Sec. III.2) (emphasis added).

<sup>25</sup> Complaint at 20-21, ¶ 79 (quoting Merriam Webster's Dictionary, 10<sup>th</sup> Edition, Merriam-Webster, Inc., 1995, at 795-6).

<sup>26</sup> Answer at 44-50, ¶¶ 88-98.

Comcast suggests that the Commission did not intend to disrupt nearly all of Comcast's channel lineups nationwide by making the condition applicable to lineups existing at the time of the transaction, but rather intended that Comcast would include independent news channels in neighborhoods like Comcast's "Master Channel Line-Up" (MCLU) on a going-forward basis.<sup>27</sup> Therefore, Comcast contends, "now or in the future" must refer to channel lineups Comcast was introducing at the time the merger closed (the MCLU) and any groupings constructed in the future.<sup>28</sup> Comcast argues that this interpretation is consistent with the Commission's policy to impose merger conditions only to secure transaction-specific benefits or remedy transaction-specific harms rather than to address any behavior that took place before the transaction.<sup>29</sup> Comcast argues that the record in the transaction proceeding supports its conclusion that the Commission intended that the condition would have effect only prospectively.<sup>30</sup>

8. We agree with Bloomberg that the plain language of the condition suggests that the Commission intended that the condition would apply to Comcast's existing channel lineups. The condition is triggered if Comcast "now . . . carries" news channels in a neighborhood. Comcast's argument that the condition applies only to future lineups would read out of the condition the term "now . . . carries" and, thus, would be contrary to the Commission's stated intent regarding the conditions applicability. Moreover, this plain-language reading is not, as Comcast suggests, inconsistent with the "prospective" purpose of the condition. After the *Comcast-NBCU Order* was adopted and the "neighborhooding condition" became effective, Bloomberg requested to be placed in existing neighborhoods, and Comcast refused that request. Therefore, to the extent that Comcast's channel lineups contained news neighborhoods when the *Comcast-NBCU Order* was released, then Comcast "must carry all independent news and business news channels in [such a] neighborhood."<sup>31</sup>

#### **B. Defining a News Neighborhood**

9. The news neighborhood condition states that a "neighborhood" exists where Comcast places a "significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup."<sup>32</sup> Bloomberg and Comcast disagree about how to construe this definition of "neighborhood." Bloomberg asserts that a "news neighborhood exists wherever at least four news channels are located in any five adjacent channel positions."<sup>33</sup> Comcast counters that four channels are an insignificant percentage of Comcast's news programming and therefore could not possibly constitute a neighborhood, stating that: "Four news channels account for only a small fraction of the news channels Comcast carries – many of which Bloomberg has simply ignored [in its analysis of

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<sup>27</sup> *Id.* at 45-46, ¶ 91. Comcast refers to its efforts to group its programming into nationally standard network genres as the "Master Channel Line-Up" or "MCLU." Answer at 3, ¶ 4 (citing Letter from Michael H. Hammer, Esq., Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56, at 5, n.8 (Oct. 22, 2010).).

<sup>28</sup> *Id.* at 45-47, ¶¶ 90-92.

<sup>29</sup> *Id.* at 47-48, ¶¶ 93-95.

<sup>30</sup> *Id.* at 49-50, ¶¶ 96-98.

<sup>31</sup> Comcast's attempt to avoid the clear terms of the condition by arguing they are not merger-specific fails because, among other things, the vertical integration resulting from the merger immediately changes Comcast's incentive to negotiate changes in current lineups. Vertically integrated firms are subject to different rules than independent ones. *See, e.g.*, 47 U.S.C. § 548(c)(2)(C). Because the news "neighborhooding" condition is intended to prevent unfavorable carriage for competitors of Comcast's news programming affiliates, it is consistent with the Commission's policy of imposing conditions to prevent merger-specific harms.

<sup>32</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4358 (App. A, Sec. III.2).

<sup>33</sup> Complaint at 18, ¶ 75.

news on Comcast's channel lineups]."<sup>34</sup> Bloomberg asserts that the news channels in those clusters are a significant percentage of the total news channels. To support this argument, Bloomberg submits that 368 Comcast headends in the 35 most-populous DMAs that carry Bloomberg Television, also carry four news channels in five adjacent channel positions, and do not include Bloomberg Television in such a cluster.<sup>35</sup> And of those 368 headends, "362 headends carry 33% or more of their standard definition news channels in that neighborhood."<sup>36</sup> However, we need not determine whether four news channels represent a significant percentage of the total number of news channels on the headends at issue, because the percentage of news channels is only one half of the analysis—Comcast can also trigger the condition if a significant *number* of news channels are substantially adjacent to one another. We agree with Bloomberg that four general news and/or business news channels located in a series of five adjacent channels represent a significant number of news and/or business news channels and hence comprise a "neighborhood" or "news neighborhood" for purposes of the neighborhooding condition.

10. Bloomberg cites two Webster's Dictionary definitions of the term "significant": "of a noticeably or measurably large amount," and "probably caused by something other than mere chance."<sup>37</sup> Relying on these definitions, Bloomberg asserts that a "news neighborhood exists wherever at least four news channels are located in any five adjacent channel positions."<sup>38</sup> First, Bloomberg argues that four news channels is a significant number of channels because it is "of a noticeably or measurably large amount."<sup>39</sup> Second, Bloomberg asserts that this distribution of channels "results from a deliberate decision to group news channels together rather than the random placement of channels." Bloomberg bases this assertion on the statistical improbability that by mere chance Comcast would locate four news channels in any five adjacent channel positions on at least 418 of the 485 headends that carry Bloomberg Television in the 35 most-populous DMAs.<sup>40</sup> According to Bloomberg, the odds that such placement would happen by chance are one in 10<sup>-700</sup>.<sup>41</sup> Therefore, Bloomberg reasons, the number of news channels that Comcast places substantially adjacent to one another is "significant" by any definition of the word.

11. Comcast challenges Bloomberg's focus on "four news channels within five positions" as arbitrary and submits evidence purporting to show that four channels are insignificant by industry standards and therefore could not constitute a neighborhood.<sup>42</sup> Comcast supports its argument with a declaration from cable executive Michael Egan, who asserts that news neighborhoods typically involve groupings of ten or more news channels and more than 60 or 70 percent of that genre of programming.<sup>43</sup> Comcast maintains that Bloomberg ignores the obvious definitions of the word significant: "having meaning" and "important."<sup>44</sup> Therefore, Comcast argues, the Commission should focus its analysis on whether "customers, encountering a given number of news channels in adjacent channel positions, would assume that other news channels will not be found elsewhere on the system"; if not, such a grouping is

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<sup>34</sup> Answer at 2-3, ¶ 3.

<sup>35</sup> Complaint at 19, ¶ 76.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 18, ¶ 75 (quoting Merriam Webster's Dictionary, 10<sup>th</sup> Edition, Merriam-Webster, Inc., 1995, at 1091).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 19, ¶ 76.

<sup>40</sup> *Id.* at 18-19, ¶ 75.

<sup>41</sup> *Id.*

<sup>42</sup> Answer at 2-3, ¶ 3 ("Four news channels account for only a small fraction of the news channels Comcast carries – many of which Bloomberg has simply ignored [in its analysis of Comcast's channel lineups].").

<sup>43</sup> *Id.* at 3, ¶ 3, Exhibit 4 at ¶ 19.

<sup>44</sup> *Id.* at 26-8, ¶¶ 51-53.

insignificant and should not be considered a neighborhood.<sup>45</sup> Comcast concludes that a reasonable customer who encounters four news channels within a cluster of five would assume that he could find other news channels at other channel locations on the system. Comcast bolsters its argument with data demonstrating that other multichannel video programming distributors (“MVPDs”) include more channels and a higher percentage of their overall news channels clustered in their channel lineups, and argues that Comcast’s channel lineups do not contain channel groupings that industry standards would define as “neighborhoods.”<sup>46</sup> Therefore, Comcast argues that its channel lineups do not include news neighborhoods.

12. Bloomberg counters that Comcast does not demonstrate that a ten to fifteen channel grouping is more significant than a four to six channel grouping.<sup>47</sup> In response to Michael Egan’s expert declaration that Comcast’s news groupings are not significant because other MVPDs group their news programming in much larger clusters, Bloomberg points to channel lineups from Cox, Cablevision, and Charter, which it contends each carry news programming in groups of four channels on certain headends.<sup>48</sup> Bloomberg also cites an instance in which the Commission’s Enforcement Bureau referred to Comcast’s placement of the Golf Channel and Versus as “in the same neighborhood” as ESPN where ESPN was grouped with four or five other sports channels.<sup>49</sup>

13. We agree with Comcast that, in this context, the most relevant definitions of the word “significant” are “having meaning” and “important.” But we reject Comcast’s proposal that we deem a neighborhood to be “significant” only if “customers, encountering a given number of news channels in adjacent channel positions, would assume that other news channels will not be found elsewhere on the system”<sup>50</sup> as too nebulous and limiting. We conclude that a grouping of channels can be “important” and “have meaning” even if a reasonable consumer would assume that other channels with like content are available at other channel positions on the headend. Therefore, we agree with Bloomberg’s assertion that a “grouping of at least four news channels in any five channel positions is important because it is large enough to attract viewers in search of news programming.”<sup>51</sup> Although four news channels may not represent a significant percentage of Comcast’s news channels on every headend, it does represent a significant number of news channels in the context of the news neighborhooding condition. Accordingly, we adopt Bloomberg’s proposed news neighborhood definition as the standard to apply in determining the existence of news neighborhoods on the Comcast headends at issue—a news neighborhood exists where four news channels are within 5 adjacent channel positions on a headend.

### C. News Channels

14. The condition defines a neighborhood as “a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system’s channel lineup,”<sup>52</sup> and in the *Comcast-NBCU Order*, the Commission defined an “independent news channel” as a channel unaffiliated with Comcast or a top-15 programming network “whose programming is focused on public affairs, business, or local news reporting and analysis during the hours from 6:00 a.m. through 4:00 p.m.

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<sup>45</sup> *Id.* at 27, ¶ 53.

<sup>46</sup> *Id.* at 21-26, ¶¶ 40-49.

<sup>47</sup> Reply at 37.

<sup>48</sup> *Id.* at 33-34.

<sup>49</sup> *Id.* at 34.

<sup>50</sup> Answer at 27, ¶ 53.

<sup>51</sup> Reply at 15.

<sup>52</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4358 (App. A, Sec. III.2).

in the U.S. Eastern Time Zone.”<sup>53</sup> Comcast and Bloomberg disagree about what constitutes a “news channel” for purposes of the condition.<sup>54</sup> Comcast asserts that Bloomberg excludes certain news channels from its analysis of channel lineups, which (i) paints an inaccurate picture of whether a channel grouping represents a significant percentage of news channels on a given headend,<sup>55</sup> and (ii) does not accurately reflect whether Comcast already carries Bloomberg Television in a news neighborhood.<sup>56</sup> Comcast argues that Bloomberg wrongly excluded from its analysis a number of channels that meet this definition, including PEG channels, weather channels, foreign news channels, CurrentTV, and sports news channels. Bloomberg responds that Comcast seeks to define those channels as news channels “to minimize the percentage of news channels carried in the neighborhoods identified by Bloomberg.”<sup>57</sup>

15. Based on the definition of “independent news channel”<sup>58</sup> and the phrasing of the news neighborhooding condition, we conclude that the term “news channels,” as used in the condition, refers to channels whose programming during the hours from 6:00 a.m. to 4 p.m. is focused on reporting and analysis relating to public affairs or local affairs of general interest or relating to business. The Commission’s use of the phrase “news and/or business news channels” indicates that business news channels are the only specialty news channels—news channels that do not provide public affairs or local news of general interest—that the Commission intended to include in the news neighborhooding analysis. Otherwise, the Commission would have included other genres of specialty news in addition to business news in the requirement that Comcast must carry “news and/or business news channels” in a neighborhood.<sup>59</sup> If the Commission intended to include channels dedicated to reporting particular sub-genres of news (such as sports or weather news) in the analysis of neighborhooding, the Commission would have either (i) specified the specific subgenres it intended to include in addition to business news, or (ii) not specified that business news was included and left the word “news” more ambiguous. By stating that neighborhoods only include “news and/or business news,” while simultaneously defining an “independent news channel” as a channel that, in relevant part, provides “programming that is focused on public affairs, business, or local news reporting and analysis,” the Commission singled out business news

<sup>53</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4288, n.292.

<sup>54</sup> See generally Complaint at 19, ¶ 46; Answer at 21-26, ¶¶ 40-49, Exhibit 4; Reply at 21-31; Surreply at 12-18, ¶¶ 22-32.

<sup>55</sup> Answer at 23-29, ¶¶ 43-56.

<sup>56</sup> *Id.* at 31-36, ¶¶ 62-69.

<sup>57</sup> *Id.* at 21-25, ¶¶ 40-48. Indeed, Comcast’s own experts did not include sports news channels in their analysis of news neighborhoods. Answer at Exhibit 4 Attachment B; Exhibit 5, Appendix A. Furthermore, without more information about each channel’s programming, we cannot conclude that certain PEG channels are news channels. While Comcast makes a reasonable argument that these channels air “programming responsive to issues concerning the public welfare and interest,” (Reply at 16, ¶ 29) the Commission’s definition in the Comcast-NBCU Order indicates that the programming must focus on “news reporting and analysis,” and Comcast does not provide record evidence about the programming that the PEG channels air. To the extent Comcast disagrees with our conclusion that PEG channels are not independent news channels, it may submit evidence on a channel by channel basis indicating how particular PEG programming satisfies the definition of independent news channel as set forth in the *Comcast-NBCU Order*. See *Comcast-NBCU Order*, 26 FCC Rcd at 4288, n.292.

<sup>58</sup> The Commission defined an independent news channels as “a video programming network that is (i) unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries, (ii) unaffiliated with one of the top 15 programming networks, as measured by annual revenues, and (iii) whose programming is focused on public affairs, business, or local news reporting and analysis during the hours from 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone.” *Comcast-NBCU Order*, 26 FCC Rcd at 4287, n.292.

<sup>59</sup> Indeed, the Commission imposed separate conditions relating to PEG channels, but expressly excluded proposals regarding channel placement of PEG channels as it determined that channel placement for PEG channels, “is not an issue related to the proposed transaction, and is often dictated by franchise agreement and/or state and local regulations.” *Comcast-NBCU Order*, 26 FCC Rcd at 4326-7, ¶¶ 214-15, n.566 and Appendix A.

as the only discrete sub-genre of specialized news that would be considered in addition to general news programming when identifying a neighborhood.

16. Based on the information before us, we agree with Comcast that Bloomberg’s analysis does not include all of the news channels carried on Comcast’s headends.<sup>60</sup> This does not change our conclusion that four news or business news channels within a cluster of five adjacent channel positions represents a significant number of news channels—it would affect an analysis of whether a certain lineup contains a significant percentage of news channels—but it does affect the analysis of whether Bloomberg Television is already located within a news neighborhood, the importance of which we explain below.

**D. Application of the News Neighborhood Condition to Headends with Multiple News Neighborhoods**

17. Having construed the definition of “neighborhood,” we conclude, based on the record, that Comcast’s channel lineups include news neighborhoods.<sup>61</sup> We also conclude that many of Comcast’s headends include multiple news neighborhoods, and that many headends include Bloomberg Television in one of those neighborhoods though some do not.<sup>62</sup> Bloomberg proposed three remedies for Comcast’s alleged failure to carry its channel in a news neighborhood throughout this proceeding. Initially, Bloomberg requested that Comcast carry Bloomberg Television “in any channel grouping containing at least four news channels within a block of five adjacent channel positions on any Comcast headend in the top 35 most-populous DMAs that carries” Bloomberg Television.”<sup>63</sup> Then Bloomberg suggested that, if a Comcast headend contains two neighborhoods, then Comcast must carry Bloomberg Television “in both such neighborhoods.”<sup>64</sup> Finally Bloomberg stated that it “is content to be carried only in the neighborhood that carries CNBC,” so long as Comcast carries Bloomberg Television in every neighborhood that contains CNBC.<sup>65</sup> We do not believe that the Commission intended any of the remedies that Bloomberg requests. Instead, we clarify that, on headends that include multiple news neighborhoods as defined in this Order, Comcast must carry Bloomberg in one of its news neighborhoods.

18. Comcast argues that the Commission’s use of the singular “neighborhood” rather than “neighborhoods” indicates that the Commission rejected Bloomberg’s request to apply the condition to any systems that carry multiple news neighborhoods.<sup>66</sup> Bloomberg counters that in systems with two neighborhoods, “the plain terms of the news neighborhooding condition provide that [Bloomberg Television] must be located in both such neighborhoods.”<sup>67</sup> We disagree with both of these interpretations—the Commission did not intend to exclude systems with multiple neighborhoods from the

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<sup>60</sup> Compare Complaint at Exhibit F, Appendix B with Answer at Exhibit 4, Attachment B (demonstrating that Bloomberg excluded news channels like BBC World News, Current TV, Link TV, and MHz Worldview from its analysis).

<sup>61</sup> See Complaint at Exhibit H (Exhibit H is a list of news channels—as recognized by Bloomberg—on Comcast’s cable headends in the top-35 DMAs that carry Bloomberg Television and have a news neighborhood that does not include Bloomberg Television).

<sup>62</sup> Answer at 31-36, ¶¶ 62-70.

<sup>63</sup> Complaint at 21-22.

<sup>64</sup> Reply at 47.

<sup>65</sup> *Id.* at 48.

<sup>66</sup> Answer at 34-35, ¶¶ 67-69, Exhibit 16.

<sup>67</sup> Reply at 47.

condition; nor did the Commission intend to afford independent news channels the remedies that Bloomberg proposes.

19. By its terms, the news neighborhooding condition is triggered if Comcast carries news channels “in a neighborhood,” and any other news channel then must be carried “in that neighborhood.”<sup>68</sup> This language appears to contemplate a single news neighborhood and does not, as Bloomberg contends, provide a clear remedy in a situation involving multiple news neighborhoods. Although it arguably suggests that Comcast may establish no more than one news neighborhood, Bloomberg and Comcast are in accord that such an intrusive mandate—requiring that Comcast establish no more than a single news neighborhood, including where doing so could require major channel realignments—would not be an appropriate reading of the condition,<sup>69</sup> and we agree.

20. We thus must apply the condition to a headend with multiple neighborhoods, even though the condition does not clearly address the situation in which Comcast has established multiple news neighborhoods in the same channel lineup. We conclude that, just as the condition does not mandate only a single neighborhood, the condition does not require Comcast to place the same news channel in multiple neighborhoods: Such a reading is not plain on the face of the condition’s language and would unduly burden Comcast without obvious consumer gain. At the same time, we do not believe that the Commission intended to allow Comcast to evade the condition by creating multiple news neighborhoods, as Comcast appears to suggest.<sup>70</sup> Treating the condition as inapplicable where there are multiple neighborhoods would defeat the purpose of the condition, which is to prevent Comcast from forcing independent news channels into isolated channel positions while placing affiliated news networks in clearly delineated neighborhoods.<sup>71</sup> Therefore, we conclude that, on systems in which Comcast has one or more news neighborhoods, the news neighborhooding condition is most reasonably interpreted to require Comcast to carry all independent news channels and business news channels, including Bloomberg Television, in a news neighborhood, but does not require Comcast to carry such channels in every news neighborhood or in a particular neighborhood of Bloomberg’s choosing.

21. Instead of these illogical constructions, we conclude that, on systems in which Comcast has one or more news neighborhoods, the news neighborhooding condition is most reasonably interpreted as giving independent news channels and business news channels, including Bloomberg Television, a right to be placed in a news neighborhood, but does not require Comcast to carry such channels in more than one news neighborhood<sup>72</sup> or a complainant’s preferred neighborhood. If we were to require Comcast to place Bloomberg in every news neighborhood or allow Bloomberg, along with any other independent

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<sup>68</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4358 (App. A, Sec. III.2) (emphasis added).

<sup>69</sup> Comcast predicted that Bloomberg might suggest (wrongly in Comcast’s view) that the news neighborhooding condition “require[s] that Comcast collapse all news channels into a single neighborhood.” Answer at 52, ¶ 100. Bloomberg clarified in its Reply that it was not seeking this relief. Reply at 80.

<sup>70</sup> Answer at 31-35, ¶¶ 62-69.

<sup>71</sup> In the *Comcast-NBCU Order*, the Commission recognized Bloomberg’s argument that neighborhooding is important “because it enables consumers to find programming more easily and facilitates competition between programs.” *Comcast-NBCU Order*, 26 FCC Rcd at 4283, ¶ 112. It follows that isolating an independent news channel would disadvantage that news channel in relation to its non-independent competitors.

<sup>72</sup> The record underlying the *Comcast-NBCU Order* supports this interpretation. In its advocacy for the news neighborhooding condition, Bloomberg proposed a news neighborhooding condition that would require Comcast to “carry all independent news and business news channels in that AND ALL SUCH neighborhoods.” Letter from Markham C. Erickson, Counsel to Bloomberg, L.P., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (filed January 19, 2011). The Commission’s decision not to adopt a requirement that Comcast carry independent news channels in all neighborhoods indicates that the Commission did not intend to impose that requirement.

news and/or business news channel invoking this condition, to choose its neighborhood, Comcast could face major realignments of its channel lineups. We do not believe the Commission contemplated that outcome in the *NBCU-Comcast Order*. Indeed, reading the condition in such a way could create the perverse result of discouraging Comcast from carrying independent news and business news channels—a result clearly inconsistent with the intent of the news neighborhooding condition and the merger conditions overall. Rather, as Comcast argues, the Commission “narrowly tailored” the news neighborhooding condition to limit major channel realignments and the cost and customer disruptions associated with those realignments.<sup>73</sup> Our interpretation therefore reflects the Commission’s intent to prevent a specific harm resulting from the merger—that Comcast could neighborhood its newly affiliated news channels while isolating independent news channels outside of any neighborhood.<sup>74</sup> If Comcast neighborhoods its news channels and carries Bloomberg Television in a news neighborhood, then Bloomberg Television is not isolated.

22. If Bloomberg were to demonstrate discriminatory intent based on affiliation or lack thereof, however, it would be entitled to non-discriminatory carriage under other provisions of the *Comcast-NBCU Order* and our program carriage rules,<sup>75</sup> and such carriage could include placement in a neighborhood below channel 100,<sup>76</sup> the “neighborhood that includes CNBC,”<sup>77</sup> or “a preferred neighborhood.”<sup>78</sup> We caution Comcast that a discrimination complaint alleged by Bloomberg concerning this condition will be expeditiously and closely scrutinized for compliance with the *Comcast-NBCU Order*’s intent and our program carriage requirements. In the *Comcast-NBCU Order*, the Commission explicitly developed a separate mechanism to prevent Comcast from placing “unaffiliated programming in a detrimental tier or channel neighborhood.”<sup>79</sup> If Bloomberg believes that the neighborhood in which Comcast places Bloomberg Television is intended to impair Bloomberg Television’s ability to compete in the market for the provision of multichannel programming, then Bloomberg may file a complaint alleging that Comcast is discriminating against Bloomberg Television in violation of the Commission’s program carriage rules. The Commission made clear that aggrieved programmers may file such complaints, stating that “[a]llegations that Comcast has placed unaffiliated programming in a detrimental tier or channel neighborhood, based on considerations of affiliation, therefore, can be considered in any commercial arbitration proceeding or complaint process brought under the Commission’s rules.”<sup>80</sup> In its

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<sup>73</sup> Answer at 36-44 (quoting *Comcast-NBCU Order*, 26 FCC Rcd at 4287-8, ¶ 122).

<sup>74</sup> In its reply, Bloomberg explains why neighborhooding benefits channels: “channels benefit simply from being located in close proximity to other channels of the same genre.” Reply at 17. The Commission’s intent was to ensure that independent news channels are allowed to realize these benefits if any news channels are afforded this treatment. Proximity to other channels of the same genre and proximity to channels “where viewers are likely to spend quality time (rather than rarely visit)” are distinct, however, and we believe that the Commission adopted the news neighborhooding condition with the intent to afford independent news channels the former treatment rather than the latter.

<sup>75</sup> See *Comcast-NBCU Order*, 26 FCC Rcd at 4287-8, ¶¶ 121, 123; 47 C.F.R. § 76.1301(c).

<sup>76</sup> Reply at 48-49.

<sup>77</sup> *Id.* at 48.

<sup>78</sup> *Id.* at 49.

<sup>79</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4288, ¶ 123. The Commission also eased an aggrieved party’s burden of proof in making those allegations: “If program carriage disputes arise based on this non-discrimination condition, it will be sufficient for the aggrieved vendor to show that it was discriminated against on the basis of its affiliation or non-affiliation. A vendor proceeding under this condition will not need to also prove that it was unreasonably restrained from competing, as it would under our program carriage rules.” *Id.* at 4287, ¶ 121.

<sup>80</sup> *Id.* at 4288, ¶ 123. This language also indicates that the Commission anticipated that Comcast may carry more than one neighborhood of similar genres of programming on its systems. The Commission’s decision to treat discriminatory neighborhooding separately from exclusionary neighborhooding provides support for our conclusion

(continued....)

Complaint, Bloomberg does not allege that Comcast set its channel lineups with any anticompetitive or discriminatory intent. We will consider on its own merits any complaint that alleges that Comcast designed or changed a neighborhood to put Bloomberg or another party in an inferior competitive position.

23. Our interpretation is consistent with the Commission's description of the neighborhooding condition as "narrowly tailored" and strikes a reasonable balance among the interests of consumers, independent news networks, and Comcast.<sup>81</sup> Moreover, we reject Comcast's constitutional claims.<sup>82</sup> Comcast voluntarily assented to this condition knowing that it might affect some of its carriage choices.<sup>83</sup> If Comcast thought the condition was too burdensome, it had the option to refuse to agree to the condition.<sup>84</sup> Any claim that Comcast was somehow unaware that this condition could have an impact on its existing channel placement decisions is unreasonable given the condition's use of the phrase "now . . . carries," which under Comcast's proffered reading would be rendered meaningless. Our interpretation 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)<sup>85</sup> while ensuring that independent news outlets are entitled to non-discriminatory carriage within a news neighborhood when Comcast carries news channels in neighborhoods.

#### **E. Application to Instant Case and Relief**

24. As discussed above, we reject Bloomberg's contention that it is entitled to be in both news neighborhoods on headends that have two news neighborhoods or to be in the neighborhood that contains CNBC. Rather, if a particular system has a news neighborhood or multiple news neighborhoods, then Bloomberg Television is entitled to be carried in one news neighborhood. However, Bloomberg is not entitled to select the neighborhood in which it is placed. While the record before us indicates that Comcast carries Bloomberg Television in a neighborhood on certain headends it is not clear whether those headends contain more than one news neighborhood.<sup>86</sup> Moreover, Comcast and Bloomberg appear to disagree about whether Bloomberg Television is already in a neighborhood on other headends.<sup>87</sup> If

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that the condition permits multiple news neighborhoods containing different news channels, so long as those news neighborhoods do not have a discriminatory effect.

<sup>81</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4282, ¶ 110.

<sup>82</sup> Answer at 19, ¶ 37.

<sup>83</sup> See *TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, 23 FCC Rcd 15783, 15811-12, ¶ 49 (MB 2008), *rev'd on other grounds*, 25 FCC Rcd 18099 (2010) ("MASN Case"). As explained in the *MASN Case*, Comcast's First Amendment argument fails because it voluntarily assented to the condition. Furthermore, Comcast's argument fails because the neighborhooding condition promotes the substantial government interest of promoting diversity, competition, and independence in the news programming marketplace and because our interpretation of the condition to afford Comcast the editorial discretion to construct multiple neighborhoods is narrowly tailored to assure that independent news channels are not excluded from neighborhoods altogether. *Id.* (citing *Time Warner Entertainment Co., L.P. v. FCC*, 93 F.3d 957, 969 (D.C. Cir. 1996).)

<sup>84</sup> Reply at 50.

<sup>85</sup> Comcast claims that reorganizing its channel lineup in channel positions below 100 is burdensome. See Answer at 7-8, ¶¶ 14-16. We do not decide the merits of this claim in this Order, but because our interpretation of the news neighborhooding condition will not, absent a showing of discrimination, require Comcast to reorganize channel positions to place Bloomberg Television in a neighborhood below channel number 100 if there is another neighborhood above channel 100, we need not address this issue at this time.

<sup>86</sup> See Answer at 32-33, ¶¶ 64-65, Exhibit 5 at 7 (Table II).

<sup>87</sup> Compare Complaint at Exhibit H with Answer at Exhibit 5.

there is no factual dispute that a headend in a top-35 DMA (i) carries Bloomberg Television, (ii) has at least one news neighborhood (a grouping of at least four news or business news channels within a cluster of five adjacent channel positions), and (iii) does not include Bloomberg Television within a news neighborhood, then Comcast shall, within sixty days of the release of this Order, carry Bloomberg Television within a news neighborhood.<sup>88</sup> Within 14 business days of the release of this Order, Comcast shall file a list of the headends with their corresponding channel lineups that meet these criteria. For each headend in a top-35 DMA that (i) carries Bloomberg Television, (ii) has a grouping of at least four news or business news channels within a cluster of five adjacent channel positions and (iii) Comcast believes includes Bloomberg Television within a news neighborhood, Comcast shall file in this docket (and serve on Bloomberg) a channel lineup for each headend that is sufficient to demonstrate that Bloomberg Television is included within a news neighborhood.<sup>89</sup> The Media Bureau will use this information to consider on a case-by-case basis any disagreements about whether Bloomberg Television's channel position satisfies this interpretation of the "news neighborhooding" condition.

#### IV. CONCLUSION

25. We find that Comcast is placing a significant number or percentage of news and business news channels substantially adjacent to one another on certain headends' channel lineups. Accordingly, we grant Bloomberg's complaint to the extent described above, and further direct Comcast to file the information described above to provide the facts necessary to determine complete relief.

#### V. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), and Sections 1.3, 76.7, and 76.1302 of the Commission's rules, 47 C.F.R. §§ 1.3, 76.7, 76.1302, that the above-captioned complaint filed by Bloomberg, L.P. against Comcast Cable Communications, LLC **IS GRANTED** to the extent set forth above.

27. **IT IS FURTHER ORDERED** that on each headend in the top-35 most populous Nielsen Designated Market Areas that (i) carries Bloomberg Television, (ii) has a grouping of at least four news channels within a cluster of five adjacent channel positions (a "news neighborhood"), and (iii) does not include Bloomberg Television within a news neighborhood, Comcast Cable Communications, LLC, within sixty days of the release of this Order, **SHALL CARRY** Bloomberg Television within a news neighborhood as set forth above.

28. **IT IS FURTHER ORDERED** that, as set forth above, Comcast Cable Communications, LLC **SHALL FILE** no later than 14 business days from the release date of this Order, a list of each headend that meets the criteria listed in paragraph 24 of this Order.

29. **IT IS FURTHER ORDERED** that, as set forth above, Comcast Cable Communications, LLC **SHALL FILE** no later than 14 business days from the release date of this Order, a channel lineup for each headend in the Top-35 Nielsen Designated Market Areas that (i) carries Bloomberg Television,

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<sup>88</sup> Mark Israel's declaration indicates that there are at least 106 cable headends in the relevant DMAs that carry Bloomberg Television, have a news neighborhood, and do not include Bloomberg in a neighborhood. *See* Answer at Exhibit 5 at 7 (Table II) (stating that Comcast carries Bloomberg Television and has multiple news neighborhoods on 312 headends and carries Bloomberg Television in a news neighborhood on 206 headends; subtracting the 206 headends on which Bloomberg Television is in a neighborhood from the 312 that have multiple neighborhoods and carry Bloomberg Television results in 106 headends). Because there is no factual dispute about whether these headends carry Bloomberg outside of a neighborhood, Comcast shall move Bloomberg to a neighborhood on these systems within sixty days.

<sup>89</sup> We do not require Comcast to file an exhaustive list of the channel lineup for each headend that meets these criteria. A channel lineup analysis similar to Exhibit H of Bloomberg's complaint will be sufficient as long as the analysis includes the news channels adjacent to Bloomberg Television.

- (ii) has a grouping of at least four news channels within a cluster of five adjacent channel positions, and
- (iii) Comcast believes includes Bloomberg Television within a news neighborhood.

30. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau