

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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

**APPLICATION FOR REVIEW OF
COMCAST CABLE COMMUNICATIONS, LLC**

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

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

Attorneys for Comcast Cable Communications, LLC

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Comcast Cable Communications, LLC (“Comcast”), pursuant to 47 C.F.R. § 1.115, hereby files this Application for Review¹ of one aspect of the Media Bureau’s *Clarification Order* released in this proceeding on August 14, 2012.² The *Clarification Order* rules that Comcast may not satisfy the news neighborhooding condition³ by placing Bloomberg Television’s (“BTV”) high definition feed (“HD”) in an HD news neighborhood but must place BTV’s standard definition feed (“SD”) in an SD neighborhood. As such, this ruling precludes Comcast from satisfying its news neighborhooding obligation by placing BTV in *one* news neighborhood of Comcast’s choosing on a given lineup, either SD or HD, and leaves open the possibility that BTV (as well as other independent news networks) may seek to impose duplicative SD and HD news neighborhooding obligations on Comcast. The Bureau’s ruling

¹ This Application for Review is in addition to Comcast’s Application for Review of the Bureau’s May 2, 2012 Order, which was filed on June 1, 2012.

² *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Memorandum Opinion and Order, DA 12-1338 (MB rel. August 14, 2012) (the “*Clarification Order*”).

³ *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*”).

could thereby provide Bloomberg and other independent news networks with preferential carriage over non-independent news networks because *Comcast does not as a rule always carry even its affiliated news networks in a news neighborhood in both HD and SD*. The Bureau's finding is fundamentally inconsistent with the express terms of the Condition and the *Comcast-NBCUniversal Order* and this aspect of the *Clarification Order* should be reversed.

I. INTRODUCTION AND SUMMARY

Comcast appreciates the Media Bureau's reasoned decision to stay many aspects of the *Neighborhood Order*⁴ pending Commission review of the novel and important issues implicated by that order. As the Media Bureau correctly found, the Commission has not yet had the opportunity to address the requirements of the Condition, and a stay of contested channel relocation obligations is warranted until the Commission is able to provide guidance.

The Media Bureau erred, however, with respect to one aspect of the *Clarification Order* that will have wide-ranging implications on Comcast's efforts to comply with the Condition as interpreted by the Bureau. The Bureau held that Comcast must place BTV's SD feed in an SD news neighborhood, denying Comcast the ability to take both SD and HD feeds and neighborhoods into account in satisfying its compliance obligations under the *Neighborhood Order*. The *Clarification Order* also leaves open a possibility that was never contemplated, i.e., that BTV (and other independent news networks) could demand placement in *both* an SD neighborhood and an HD neighborhood by filing separate complaints for each. In addition, because the HD option is frequently the least disruptive option available to minimize disturbance to consumers and other programming networks, the *Clarification Order* removes the Condition even further from the narrowly-tailored provision the Commission adopted.

⁴ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, 27 FCC Rcd 4891 (MB 2012) (the "*Neighborhood Order*").

The Bureau's decision finds no support in the language or purpose of the Condition, which does not distinguish between SD and HD neighborhoods. According to the Media Bureau, it was not required to address the HD option largely because Bloomberg's complaint sought relief only with respect to SD channel placement. But because the Condition requires only placement in "a neighborhood" and draws no distinction between SD and HD neighborhoods, it necessarily contemplates, and most definitely does not preclude, HD placement as an option. Bloomberg should not be permitted to circumvent that compliance option through artful pleading. Nor should the Bureau be permitted to revise a narrow condition in a manner that expands the burden and restricts Comcast's discretion far more than either the Commission or Comcast ever contemplated when the Condition was crafted and adopted, and well beyond the bounds of the problem the Commission was addressing or the First Amendment would permit.

Comcast agrees with the Media Bureau that this is an important opportunity for the Commission itself to clarify the meaning and requirements of the Condition. The Commission's guidance will have implications not just for Bloomberg, but for all other independent news networks requesting news neighborhooding under the Condition as well. The Commission should set aside one aspect of the *Clarification Order* and hold that the Condition may be satisfied at Comcast's discretion by placing the HD feed of a news network, if available, in HD-only neighborhoods and that independent news networks are not entitled under the Condition to be placed in both SD and HD news neighborhoods.

II. PROCEDURAL BACKGROUND

As part of its approval of the Comcast/NBCUniversal transaction in 2011, the Commission adopted the news neighborhooding Condition, which provides:

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.⁵

On June 13, 2011, Bloomberg filed a complaint seeking a Commission order directing Comcast to move BTV into any channel grouping containing four news networks within five adjacent channel positions on any headend located in the top 35 Nielsen Designated Market Areas ("DMAs").⁶ The Media Bureau released the *Neighborhood Order* on May 2, 2012, holding that (i) four news or business news channels within any five adjacent channel positions constitutes a "news neighborhood" for purposes of the Condition and (ii) if a Comcast system has more than one news neighborhood, the Condition obligates Comcast to carry BTV in one such neighborhood, but *not* in all news neighborhoods, in any particular neighborhood, or in one consolidated news neighborhood.⁷ Thus, the Media Bureau ordered Comcast within 60 days to begin carrying BTV in one such news neighborhood "on each headend in the top-35 most populous [DMAs] that (i) carries Bloomberg Television, (ii) has a grouping of at least four news channels within a cluster of five adjacent channel positions . . . , and (iii) does not include [BTV] within a news neighborhood."⁸ The *Neighborhood Order* did not distinguish between SD and HD neighborhoods.

⁵ *Comcast-NBCUniversal Order*, 26 FCC Rcd at 4358, Appendix A § III.2.

⁶ *See Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Complaint, at 21 (filed June 13, 2011).

⁷ *Neighborhood Order* ¶ 2 (emphasis supplied).

⁸ *Id.* ¶ 27.

On June 1, 2012, Comcast and Bloomberg both filed applications for review (“AFRs”) with the Commission.⁹ The same day, Comcast filed a Motion for Partial Extension of Time.¹⁰

After reviewing the arguments raised in Bloomberg’s AFR, Comcast concluded that, if Bloomberg were to prevail, many of the remedial steps taken by Comcast would be rendered ineffective or redundant. Accordingly, Comcast filed a Motion for Expedited Stay on June 8, 2012.¹¹ On June 14, 2012, the parties met with Media Bureau staff to discuss issues relating to the Stay Petition, including Bloomberg’s claim that the Condition provides BTV a duplicative right to be placed in both SD and HD news neighborhoods.¹² During that meeting, the parties reached an agreement in principle regarding channel relocations on certain categories of headends.¹³ The parties were unable to reach an agreement, however, regarding whether Comcast could comply with the *Neighborhood Order* by placing BTV’s HD feed in an HD news neighborhood, rather than BTV’s SD feed in an SD news neighborhood.¹⁴

⁹ *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) (“Bloomberg Application for Review”).

¹⁰ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Motion for Partial Extension of Time of Comcast Cable Communications, LLC (filed June 1, 2012).

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

¹² See Letter from David H. Solomon and J. Wade Lindsay, Counsel for Comcast Communications, LLC, to William T. Lake, Chief, Media Bureau, Federal Communications Commission, MB Docket No. 11-104 (June 19, 2012) (“Comcast’s June 19 Letter”).

¹³ Comcast’s June 19 Letter at 2. These relocations were undertaken without prejudice to action on Comcast’s Application for Review.

¹⁴ As discussed below, Comcast’s proposal to place BTV HD in an HD news neighborhood would have: (1) benefited BTV because it would have resulted in additional launches of BTV HD on some lineups; (2) in all cases, BTV SD would have retained its channel placement so it

The Media Bureau requested supplemental filings from both parties and indicated that it would decide the SD/HD issue when it issued its decision on Comcast's Stay Petition.¹⁵ On June 19 and June 21, 2012, the parties filed submissions addressing the issues related to the stay and the SD/HD question.¹⁶

The Media Bureau issued its *Clarification Order* on August 14, 2012, finding that the *Neighborhood Order* concerned only whether the Condition entitles BTV SD to carriage in SD news neighborhoods, and further ruling that Comcast must carry BTV SD in an SD news neighborhood on headends where the channel lineup contains an SD neighborhood and could not satisfy its obligations by placing BTV HD in an HD news neighborhood.¹⁷ The Bureau did not account for the fact that this would further burden Comcast and other programming networks, since Comcast would be forced to displace other programmers to make space for BTV in SD news neighborhoods in crowded segments of its channel lineups. However, the Bureau did recognize "the novelty and importance of the issues presented warrant an administrative stay . . . to provide the Commission an opportunity to resolve the issues on review."¹⁸

would have been added to a news neighborhood without disrupting customer expectations; and (3) placement in the HD neighborhood would have ensured BTV HD would be near CNBC HD on a number of lineups – in keeping with Bloomberg's stated preference to have BTV near CNBC – and all while minimizing disruption for customers and other programming networks.

¹⁵ Comcast's June 19 Letter at 2.

¹⁶ See Comcast's June 19 Letter; Letter from David H. Solomon and J. Wade Lindsay, Counsel for Comcast Communications, LLC, to William T. Lake, Chief, Media Bureau, Federal Communications Commission, MB Docket No. 11-104 (June 21, 2012) ("Comcast's June 21 Letter"); Bloomberg L.P.'s Response to the Media Bureau's Request for Additional Information Regarding High Definition News Neighborhoods, MB Docket No. 11-104 ("Bloomberg's June 19 Filing"); Bloomberg L.P.'s Response to Comcast Cable Communications, LLC's Letter Responding to the Media Bureau's Request for Additional Information Regarding High Definition News Neighborhoods, MB Docket No. 11-104 ("Bloomberg's June 21 Filing").

¹⁷ *Clarification Order* ¶ 13.

¹⁸ *Id.* ¶ 11.

III. STATEMENT OF ERROR

The Bureau erred by ruling that Comcast must place BTV's SD feed in an SD neighborhood and declining to permit Comcast to satisfy the Condition by placing BTV's HD feed in a HD news neighborhood. This ruling is fundamentally at odds with the language and purpose of the Condition.

IV. THE *CLARIFICATION ORDER* IS INCONSISTENT WITH THE TEXT AND PURPOSE OF THE CONDITION

The Media Bureau's ruling that placing BTV's HD feed in an HD news neighborhood does not satisfy the Condition and Comcast must therefore place BTV's SD feed in an SD news neighborhood is fundamentally at odds with the Condition, which required only that BTV be placed in one neighborhood, not multiple neighborhoods. The *Clarification Order* improperly expands the scope of the Condition, causes additional major channel realignments and associated consumer disruption, further restricts Comcast's editorial discretion, and elevates artful pleading over the intent of the Condition.

A. The *Clarification Order* Improperly Expands the Scope of the Condition

Nothing in the "narrowly-tailored" Condition,¹⁹ the *Neighborhood Order*, or the *Comcast-NBCUniversal Order* contemplates that an independent news network would have the ability to compel Comcast to reengineer its channel lineups to ensure that both the network's SD and HD feeds are included in news neighborhoods.²⁰ To the contrary, the Condition is satisfied so long as an independent news network is included in *one* news neighborhood, because that

¹⁹ *Comcast-NBCUniversal Order*, 26 FCC Rcd at 4287-88, ¶ 122 ("In addition, although we decline to adopt a requirement that Comcast affirmatively undertake neighborhooding, in accordance with the special importance of news programming to the public interest, we adopt a *narrowly tailored* condition related to channel placement for independent news channels." (emphasis added)).

²⁰ See Comcast's June 21 Letter at 2.

accomplishes the goals the Commission sought to serve with this targeted, “narrowly tailored” condition.²¹ As the Bureau recognized in the *Neighborhood Order*, the Condition is intended “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.”²² Thus, if “Comcast neighborhoods its news channels and carries [BTV] in a news neighborhood, then [BTV] is not isolated.”²³

To that end, the Condition and the *Neighborhood Order* on their face only require Comcast to carry an independent news network in “a news neighborhood” and do not “require Comcast to carry such channels in every news neighborhood or in a particular neighborhood of [the network’s] choosing.”²⁴ As the Bureau itself previously 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.²⁵

This plain language reading of the Condition makes perfect sense, because the neighborhooding condition is a supplement to – not a wholesale substitute for – the program

²¹ *Comcast-NBCUniversal Order*, 26 FCC Rcd at 4287-88, ¶ 122; *see also* Comcast’s June 21 Letter at 2.

²² *Neighborhood Order* ¶ 21.

²³ *Id.*

²⁴ *Id.* ¶ 20.

²⁵ *Id.* ¶ 23 (citations omitted).

carriage rules.²⁶ The Condition requires that independent news networks be placed in a news neighborhood rather than in an isolated channel position. As the Bureau recognized, once an independent news network is placed in one news neighborhood in a Comcast lineup, the concern motivating the Condition is satisfied.²⁷ Of course, carriage in multiple news neighborhoods might theoretically be even *more* attractive to the news network, but the Condition simply was not designed to ensure independent news networks preferable channel locations 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.²⁸

By requiring Comcast to satisfy the Condition only by carrying BTV's SD feed in an SD news neighborhood and not by carrying BTV's HD feed in an HD neighborhood, however, the Bureau has reversed course and opened the possibility that the Condition may be interpreted to ensure that an independent news network with an SD and an HD feed is entitled to be "neighborhooded" at least twice on every single lineup that contains both an SD and an HD news neighborhood. This outcome would significantly increase the burdens on Comcast, as well as the disruptions to its customers and innocent third-party networks. And it further burdens and limits Comcast's editorial discretion well beyond anything contemplated by the Commission or Comcast when the Condition was adopted, allowing the Commission (or a complainant) to dictate *which* news neighborhood a particular news network belongs in. It also affects whether Comcast can focus on enhancing or developing its HD news lineups or must continue to maintain an SD neighborhood, and/or whether it must have parallel neighborhoods in its SD and

²⁶ See *Comcast-NBCUniversal Order*, 26 FCC 4287-88, ¶¶ 122-23.

²⁷ *Neighborhood Order* ¶ 21.

²⁸ *Id.*

HD news lineups. There is absolutely no indication anywhere in 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 narrow language and intent.²⁹

Furthermore, reversing course in this way potentially guarantees 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. No other news network is carried in both SD and HD neighborhoods on all Comcast lineups. In fact, of the total lineups in which Comcast has both an SD and an HD neighborhood and carries both MSNBC's SD and HD feeds, Comcast carries the network in only one neighborhood (either SD or HD) in over 60 percent of the lineups.³⁰ In comparable situations, Comcast carries: (1) CNBC in only one news neighborhood in roughly 20 percent of the lineups; (2) CNN in only one news neighborhood in roughly 25 percent of the lineups; and (3) Fox News in only one news neighborhood in roughly 20 percent of the lineups.³¹ Thus, by reading the Condition as potentially granting BTV separate neighborhooding rights as to its SD and HD feeds in 100 percent of the lineups in which Comcast will carry BTV in a news neighborhood, the Bureau's interpretation of the Condition would give BTV a competitive advantage as compared to non-independent news networks.

B. The *Clarification Order* Will Result in More Major Channel Realignments and Consumer Disruption

As noted above, the Bureau previously (and correctly) ruled that the Condition requires Comcast to carry an independent news network only in a single news neighborhood, thereby

²⁹ *Id.* (“If Comcast neighborhoods its news channels and carries Bloomberg Television in a news neighborhood, then Bloomberg Television is not isolated.”).

³⁰ *See* Comcast June 21 Letter, Israel Decl. ¶ 4.

³¹ *Id.*

avoiding duplication of programming and limiting the burdens on Comcast and its customers, while providing independent news networks carriage within a news neighborhood.³² The Bureau has now reversed course and opened the possibility that the Condition requires Comcast to “neighborhood” both BTV’s SD and HD feeds. As such, the Bureau’s ruling could substantially increase the number of major channel realignments and associated customer disruption originally contemplated by the *Neighborhood Order*.

As Comcast discussed in its Stay Motion, in approximately 140 of the affected lineups, Comcast had planned to comply with the *Order* by placing BTV’s HD feed in an HD news neighborhood.³³ Placing BTV’s HD feed in an HD neighborhood (where available) is frequently the least disruptive option available because HD channel lineups are typically in higher channel positions that are less settled from a consumer expectations perspective than their SD counterparts (especially those lineups below channel 100). In addition, CNBC is typically included in these HD neighborhoods, which is consistent with Bloomberg’s stated preference for being placed near CNBC.

Further, Comcast believes that HD better reaches BTV’s target demographic, which tends to be affluent consumers who already have access to HD content. Moreover, Comcast had planned to use HD neighborhoods to comply with the Condition while leaving BTV’s existing SD channel in place. In short, Comcast’s approach would have provided BTV with the very attractive HD 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.

By removing the HD neighborhood compliance option here, the Bureau has denied Comcast any editorial flexibility regarding how to satisfy the Condition and will create even

³² *Neighborhood Order* ¶ 23.

³³ Stay Petition at 10.

more interference with Comcast's channel lineups by compelling additional relocation of networks in the 1-99 channel range, where disruption to subscribers and other programming networks is the most acute.³⁴ Such a result runs 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,"³⁵ and distorts the Condition beyond what the First Amendment will bear.

Finally, the Bureau's *Clarification Order* may also have the perverse effect of restricting the natural development of the market towards HD viewing. Comcast anticipates that over the next few years, the importance of HD channel placement will continue to grow as HD technologies continue to penetrate the market and networks and customers will increasingly favor HD distribution.³⁶ Although today most networks with an HD feed also provide an SD feed, this is not uniformly the case and, over time, will be even less so. As viewers increasingly migrate to HD, it is becoming and will become a substitute for – not a supplement to – SD.³⁷ A legal requirement that Comcast must carry any requesting independent news network that has evolved to HD in both SD and HD neighborhoods may well discourage Comcast and independent news networks from carrying HD feeds of some channels at all, and could interfere

³⁴ Comcast Application for Review at 12.

³⁵ *Neighborhood Order* ¶ 21.

³⁶ As Bloomberg is aware, Comcast has launched BTV in HD to millions of subscribers already and has no plans to change course as it digitizes its systems. Comcast has the right to launch BTV everywhere and even to use its HD feed instead of its SD feed, though Comcast has not and does not presently seek to do so.

³⁷ Indeed, Comcast's experience suggests that BTV viewers are largely and increasingly HD subscribers, and active viewers of HD news. This would suggest that "neighborhooding" BTV in HD should be a satisfying and, in fact, attractive proposition for Bloomberg. In contrast, compelling a simultaneous "neighborhooding" effort in SD on the same lineups would be, at best, duplicative and more likely wasteful and needlessly disruptive, in tension with the Commission's "narrowly tailored" Condition.

with a natural evolution to HD-only distribution models. This result would be akin to encouraging analog distribution in a world where digital distribution was already starting to take hold, thereby preventing a cable operator like Comcast from launching the ten to fourteen digital networks it could launch in the same bandwidth used for one analog channel. Beyond the practical implications of such interference, it also interferes significantly with Comcast's development of its channel lineup and the means by which it presents programming to viewers.

C. The *Clarification Order* Elevates Artful Pleading Over the Intent of the Condition

The Media Bureau explained that its decision not to address how the Condition applies to HD carriage was based primarily upon “the limited scope of Bloomberg’s complaint,” which dealt only with “SD carriage under the news neighborhooding condition.”³⁸ Although it acknowledged that Bloomberg’s “complaint cannot change the meaning of the [news neighborhooding] Condition,” the Media Bureau nonetheless accepted that the complaint had “framed” the proceeding as limited only to SD carriage and thus the Bureau need not address HD carriage as an option for compliance.³⁹ But the Media Bureau simply sidestepped the relevant question. As explained above, the Condition itself does not distinguish between SD and HD news neighborhoods. If Comcast is correct that the Condition grants Comcast the discretion to comply with its terms by placing an independent news network into an HD-only news neighborhood (even where an SD news neighborhood exists), then Bloomberg cannot be allowed to eliminate that compliance option by limiting its complaint only to SD neighborhoods. To find otherwise would impermissibly allow Bloomberg (or any other party) to alter the requirements of the Condition through artful pleading. Thus, any finding that requires Comcast to place BTM

³⁸ *Clarification Order* ¶ 9.

³⁹ *Id.*

into “a news neighborhood” necessarily implicates HD carriage questions. The Media Bureau improperly declined to account for this.

V. THE COMMISSION SHOULD TAKE THIS OPPORTUNITY TO PROVIDE GUIDANCE ON WHAT THE CONDITION REQUIRES AND THE SD/HD ISSUE SHOULD BE PART OF THAT GUIDANCE

As Comcast explained in its Application for Review, Bloomberg’s contention that its Complaint “dealt exclusively with the placement of its standard definition feed”⁴⁰ creates a number of uncertainties. Now that the Media Bureau has clarified that its *Neighborhood Order* addressed carriage of BTV SD in SD neighborhoods only, those uncertainties will continue to exist unless the Commission takes the opportunity to provide guidance on what the Condition requires in lineups that carry BTV HD and/or contain HD neighborhoods.⁴¹

As the Media Bureau explained in its *Clarification Order*, the Bureau stayed the effectiveness of the order with respect to particular types of headends to “help avoid and reduce disruption to consumers that could arise if Comcast were required to adjust channel lineups more than once.”⁴² In light of these same considerations, the Commission should decide what is required of Comcast to comply with the Condition for both SD and HD news neighborhoods. Absent such guidance, Comcast will be forced to follow its own good-faith interpretation of what the Condition means for HD networks and HD neighborhoods. Moreover, it encourages continued litigation – Bloomberg can turn around and file a new complaint against Comcast

⁴⁰ Bloomberg Application for Review at 5 n.15.

⁴¹ To take just one example, the *Neighborhood Order* emphasizes that Comcast is only required to place BTV in a single news neighborhood. Meanwhile, the *Clarification Order* now compels Comcast to place BTV in a single SD neighborhood. If and when Bloomberg demands that it also be placed in HD neighborhoods, the upshot of that demand could be that Bloomberg would be placed on two neighborhoods on many lineups – which is directly at odds with the *Neighborhood Order*.

⁴² *Clarification Order* ¶ 10.

seeking placement of BTV HD in an HD neighborhood and force Comcast, the Media Bureau, and possibly the Commission to participate in a second proceeding that is largely duplicative of the current one. If Comcast is then required to place HD news networks into HD news neighborhoods, this will likely result in additional changes to channel lineups, with the attendant costs and customer disruption that entails.

These unnecessary costs and disruptions can be avoided if the Commission takes this opportunity to provide guidance on what the Condition requires in lineups that carry BTV HD and/or contain HD neighborhoods. Further, the Commission can provide this guidance on the strength of the record before it and, thus, there would be no public interest or administrative benefit from the Commission deferring resolution of this issue.

VI. CONCLUSION

For the foregoing reasons, the Commission should reverse the *Clarification Order* to the extent it precludes Comcast from satisfying the Condition by placing BTV in a single news neighborhood (either SD or HD) on any given channel lineup. The Commission should instead confirm the Bureau's previous ruling that the Condition and the *Order* require only that Comcast carry an independent news network in single news neighborhood and "does not require Comcast to carry such channels in every news neighborhood or in a particular neighborhood of" the network's choosing.⁴³ 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.

⁴³ *Neighborhood Order* ¶ 20.

Respectfully submitted,

COMCAST CABLE COMMUNICATIONS, LLC

Sarah L. Gitchell
Thomas R. Nathan
**COMCAST CABLE
COMMUNICATIONS, LLC**
One Comcast Center
Philadelphia, PA 19103

By: /s/ Arthur J. Burke
Michael P. Carroll
Arthur J. Burke

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

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

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

Attorneys for Comcast Cable Communications, LLC

September 13, 2012

VERIFICATION

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

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

September 13, 2012

/s/ Arthur J. Burke

Arthur J. Burke

CERTIFICATE OF SERVICE

I, Arthur J. Burke, hereby certify that, on September 13, 2012, copies of the attached “Application for Review of Comcast Cable Communications, LLC” were filed through the Commission’s Electronic Comment Filing System and served by hand delivery to the following:

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

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

In addition, a copy of the attached “Application for Review of Comcast Cable Communications, LLC” was served by email to:

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

/s/ Arthur J. Burke
Arthur J. Burke