

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

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

To: The Commission

**BLOOMBERG L.P. OPPOSITION TO THE COMCAST CABLE
COMMUNICATIONS, LLC APPLICATION FOR REVIEW**

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EXECUTIVE SUMMARY

The facts of this case are very simple. The Commission conditioned its approval of the Comcast-NBCUniversal merger on certain conditions, including a neighborhooding condition for independent news networks. Comcast accepted the *Merger Order*, as conditioned, and did not challenge the conditions. Bloomberg filed a complaint with the FCC requesting neighborhooding for Bloomberg Television (“BTV”) in all standard definition (“SD”) news neighborhoods. Comcast not only excluded HD from its response, analysis, and expert testimony, it argued that Bloomberg could not request placement in HD neighborhoods.

The Bureau granted the requested relief in the *Neighborhood Order*. In a motion for an extension of time, Comcast indicated its intention to comply with the *Neighborhood Order* in numerous markets by incorrectly neighborhooding BTV only in HD neighborhoods. The Bureau requested additional information from Comcast and Bloomberg regarding the unsupported remedy of neighborhooding BTV only in HD neighborhoods to satisfy the relief granted in the *Neighborhood Order*. The Bureau then issued a second order clarifying that the only issue in front of it involved placing BTV in SD neighborhoods, and again granted Bloomberg’s request for relief, ordering “Comcast to place Bloomberg SD in SD [news] neighborhoods.”

Commission precedent states that SD and HD feeds of programming networks are different and that each feed provides viewers with a different viewing experience. Bloomberg included evidence in the record illustrating the differences between BTV-SD and BTV-HD.

Based on (i) Commission precedent, (ii) Bloomberg’s evidence in the record demonstrating the differences between BTV-SD and BTV-HD and (iii) Comcast’s own arguments and carriage of numerous channels in both SD and HD, the *Clarification Order* explained that the “Neighborhood Order only addressed carriage of BTV-SD in SD news neighborhoods.” The *Clarification Order* does

not expand the scope of the Neighborhooding Condition or otherwise impose additional burdens on Comcast.

Comcast incorrectly alleges that the *Clarification Order* will require Comcast to make major channel lineup changes in order to neighborhood BTV. The evidence in the record demonstrates that Comcast voluntarily makes channel lineup changes far in excess of the channel changes involved in neighborhooding BTV. In fact, Comcast moved channels at least 10,625 times in an approximately eleven-month period in 2010 and 2011.

Comcast also agreed to make any necessary channel lineup changes when it accepted the Neighborhooding Condition. Comcast agreed to the Neighborhooding Condition as part of the *Merger Order* and Comcast cannot be allowed to rewrite the Neighborhooding Condition to accommodate its preferred method of implementation.

The Bureau correctly directed Comcast to neighborhood BTV-SD in SD news neighborhoods. Comcast's continued efforts to try to provide relief to Bloomberg, which Bloomberg did not request and Comcast states in other proceedings cannot be provided, are delay tactics to avoid complying with the *Neighborhooding Condition*. Bloomberg requests that the Commission affirm the *Clarification Order*, deny Comcast's requests for further guidance, and direct Comcast to carry BTV in all SD news neighborhoods.

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I. INTRODUCTION

Bloomberg, L.P. (“Bloomberg”) opposes Comcast Cable Communications, LLC’s (“Comcast”) Application for Review of the Order released by the Media Bureau (“Bureau”) on August 14, 2012, in the above-captioned docket.¹ In the *Clarification Order*, the Bureau agreed with Bloomberg that its complaint (“Complaint”) against Comcast was limited to standard definition (“SD”) carriage of Bloomberg Television (“BTV”) on Comcast’s channel lineups. As such, the Bureau appropriately clarified that the relief granted by the Bureau’s *Neighborhood Order*² as a result of the Complaint was similarly limited to SD carriage. The Bureau’s findings are supported by precedent, the plain language of the neighborhooding condition in the Comcast-NBCUniversal

¹ *Bloomberg L.P. v. Comcast Cable Communications, LLC, Memorandum Opinion and Order*, 27 FCC Rcd 9488 (MB 2012) (“*Clarification Order*”).

² *Bloomberg L.P. v. Comcast Cable Communications, LLC, Memorandum Opinion and Order*, 27 FCC Rcd 4891 (MB 2012) (“*Neighborhood Order*”).

Merger Order (“Neighborhooding Condition”),³ and substantial record evidence. No further guidance regarding the different nature of High Definition (“HD”) and SD network feeds, therefore, is needed from the Commission. It is time for Comcast to neighborhood BTV in all news neighborhoods.

II. ARGUMENTS

A. The *Clarification Order* Is Consistent With FCC Precedent And The Neighborhooding Condition

Comcast’s allegations ignore (1) the Commission’s numerous findings that SD channels differ from HD channels; (2) the evidence that Bloomberg submitted demonstrating the differences in the SD and HD programming feeds of BTV and CNBC; and (3) the fact that Bloomberg only requested SD relief and Comcast’s own arguments and carriage of numerous channels in both SD and HD.

1. FCC Precedent States that SD and HD Feeds of a Programming Network are Different

Commission precedent recognizes and confirms that SD and HD programming feeds of a network provide viewers with different content and viewing experiences. In the *2010 Program Access Order*, the FCC explained:

There is substantial evidence regarding consumers’ preference for HD programming in the context of MVPD services, and the record shows that MVPD subscribers do not consider SD programming to be an acceptable substitute for HD programming. The SD and HD versions of the same network have different technical characteristics and sometimes even different content. HD programming has thus become an important part of a competitive MVPD offering.

Based on the record evidence described above, in particular the fact that SD and HD versions of the same network have different technical characteristics and sometimes even different content, we conclude that the HD version of a particular

³ *Applications of Comcast Corp., General Electric Company and NBC Universal Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order*, 26 FCC Rcd 4238 (2011) (“*Merger Order*”).

programming channel should be treated as a distinct service from the SD version of the same network.⁴

In *Verizon*, the Commission found that SD and HD feeds have “different technical characteristics and sometimes different content.”⁵ Moreover, it concluded that “consumers do not consider the standard definition (“SD”) version of a particular channel to be an adequate substitute for the HD version.”⁶ The D.C. Circuit upheld the agency’s decision that SD and HD channels are distinct and not considered adequate substitutes by consumers.⁷

Again in *AT&T*, the Commission found that SD and HD feeds have “different technical characteristics and sometimes different content.”⁸ Moreover, it concluded that “consumers do not consider the standard definition (“SD”) version of a particular channel to be an adequate substitute for the HD version.”⁹

Before the Bureau, Bloomberg cited to the principle embodied in the *2010 Program Access Order*, the *AT&T*, and *Verizon* cases that SD and HD channels are different, and explained how this principle must also apply in the context of the neighborhooding condition.¹⁰ Indeed, Comcast itself

⁴ *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, First Report and Order*, 25 FCC Red 746, 784-85, ¶¶ 54-55 (2010) (“*2010 Program Access Order*”), *affirmed in part and vacated in part sub. nom. Cablevision Sys. Corp. et al. v. FCC*, 649 F.3d 695 (D.C. Cir. 2011).

⁵ *Verizon Telephone Cos. v. Madison Square Garden, L.P.*, *Order*, 26 FCC Rcd 13145, 13148, ¶ 4 (2011) (“*Verizon*”).

⁶ *Verizon* at 13148, ¶ 4 (citing *2010 Program Access Order*).

⁷ *Verizon* at 15857, n.61 (“In any event, Verizon's initial statement is insufficient to undermine the Commission's conclusion in the [*2010 Program Access Order*], reached in the context of a rulemaking proceeding and subsequently upheld by the D.C. Circuit, that the SD and HD versions of the same network are distinct and are not considered adequate substitutes by consumers.”); *Cablevision Sys. Corp.*, 649 F.3d at 717.

⁸ *AT&T Servs., Inc. & Southern New England Tel. Co. d/b/a AT&T Connecticut v. Madison Square Garden, L.P. & Cablevision Sys. Corp.*, *Order*, 26 FCC Rcd 13206, 13209, ¶ 4 (MB 2011) (“*AT&T*”).

⁹ *AT&T* at 13209, ¶ 4 (citing *2010 Program Access Order*).

¹⁰ Bloomberg, Application for Review, *Bloomberg, L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104, at 5, n. 15 (filed June 1, 2012) (“Bloomberg Initial Application for Review”); Bloomberg L.P.’s Response to the Media Bureau’s Request for Additional Information Regarding High

has in other circumstances argued they are different and,¹¹ even in this docket, it has argued that SD and HD are “distinct services.”¹² Moreover, Comcast carries its news channels (MSNBC and CNBC) in both SD and HD on its channel lineups.

More recently, the Commission confirmed that it would continue to treat SD and HD networks differently. In the *Video Competition Notice of Inquiry*, the Commission stated “We also differentiated between the availability of standard definition (“SD”) and high definition (“HD”) versions of individual networks consistent with recent Commission decisions. We anticipate reporting this type of information again in the 15th Report.”¹³

Comcast has not provided any justification for the Commission to depart from this precedent. In fact, no principled explanation exists to justify reversing course by treating SD and HD channels as identical networks for purposes of the Neighborhooding Condition. “[I]f the

Definition News Neighborhoods, *Bloomberg, L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104, at 5 (filed June 19, 2012) (“Bloomberg June 19 HD Filing”).

¹¹ See Petition for Stay Pending Judicial Review of Comcast Cable Communications, LLC, *The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, MB Dkt. No. 10-204, at 5 (filed July 30, 2012) (“Many networks, including Tennis Channel, Golf Channel and Versus provide Comcast with two different feeds of their programming, one in standard definition (“SD”) and one in HD. An HD feed is a digital transmission of video programming with substantially improved video and audio quality as compared to SD feed of the same network.”); see also Letter and Responses of Comcast Corporation to the Commission’s Second Information and Document Request (“Request”) from Michael H. Hammer, counsel for Comcast, to Marlene H. Dortch, FCC MB Dkt. No. 10-56 at 17 (filed Oct. 18, 2010) (“Like other RSNs, CSN-BA can only telecast one game at a time on its main feed and has to transmit ‘conflict games’ via an alternate feed, often without HD capacity, for distribution by MVPDs on one or more ‘overflow’ channels. This resulted in viewer confusion and lesser quality-SD-programming.”).

¹² See Surreply of Comcast Cable Communications, LLC, *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104 at 13, ¶ 24 (filed Sept. 27, 2011) (“Surreply”).

¹³ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry*, 27 FCC Rcd 8581, 8588-89 ¶¶ 20-21 (2012) (“*Video Competition Notice of Inquiry*”).

agency wishes to depart from its consistent precedent it must provide a principled explanation for its change of direction.”¹⁴

2. BTV-SD and BTV-HD Provide Viewers with a Different Viewing Experience and Different Content

BTV-HD is distinct from BTV-SD. BTV-HD added more data to the screen, including an HD wing that houses “rates, data, and an array of market business information from Bloomberg’s global news and financial information organization.”¹⁵ BTV-HD was designed to “serve our viewers with unique and relevant information that’s easy to process at a glance,” including being “designed to be easy to understand at a glance, with color-coded market indicator chips...graphs, company metrics, ... and more headlines and context to supplement Bloomberg Television’s award-winning reporting on markets, breaking news and world events.”¹⁶ BTV’s HD format provides more “real estate” on screen, so that “every two minutes, the viewer is getting ten new pieces of freshly updated information, displayed in three different quadrants.”¹⁷

Further, Bloomberg provided evidence to the Bureau of the differences between BTV’s HD and SD feeds – as well as of these differences between the HD and SD feeds of CNBC.¹⁸

¹⁴ *National Black Media Coalition v. FCC*, 775 F.2d 342, 355 (D.C. Cir. 1985), citing *Airmark Corp. v. FAA*, 758 F.2d 685, 691-92 (D.C. Cir. 1985).

¹⁵ *HD Launch on Time Warner Cable Puts Bloomberg Television in Focus*, Multichannel News, (May 9, 2011) available at <http://www.multichannel.com/article/467990-HD-Launch-On-Time-Warner-Cable-Puts-Bloomberg-Television-In-Focus.php>.

¹⁶ Press Release, *Bloomberg TV Launches High-Definition Television Channel, 'Bloomberg HD,'* (May 11, 2011) available at <http://www.bloomberg.com/news/2011-05-11/bloomberg-tv-launches-high-definition-channel-bloomberg-hd-.html>.

¹⁷ *Bloomberg Charts an HD Course: Ahead of the Business Curve*, Newscast Studio, (June 8, 2011) available at <http://www.newscaststudio.com/blog/2011/06/08/bloomberg-charts-an-hd-course-ahead-of-the-business-curve/>.

¹⁸ 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, *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Dkt No. 11-104, at Ex. A (filed June 21, 2012) (“Bloomberg June 21 HD Filing”).

Specifically, Bloomberg submitted for the record in its June 21 Response to Comcast, screen shots of BTV and CNBC in SD and HD.¹⁹ The screen shots clearly show that the HD feeds of BTV and CNBC provide features and data that are not available on the SD feeds of BTV and CNBC.²⁰ As can be seen from looking at the channels, BTV and BTV-HD are, in fact, different.²¹ In light of this information, it is not surprising that Comcast carries its affiliated news networks MSNBC and CNBC in both SD and HD neighborhoods on its channel lineups.²²

The reality is that SD and HD channels are distinct. Comcast has acknowledged that fact and the FCC determined that SD and HD channels are not the same because they have different technical characteristics and sometimes different content. As such, Comcast cannot treat SD and HD channels as the same for compliance purposes. It is yet another attempt by Comcast to avoid the commitment it made when it accepted the news neighborhooding condition, closed the *Comcast/NBCU* deal, and began reaping the financial benefits of that transaction.

3. Bloomberg's Complaint Only Requested SD Relief

The Bureau correctly concluded in the *Clarification Order* that the relief granted in the *Neighborhood Order*²³ is limited to neighborhooding BTV-SD in SD news neighborhoods. Neighborhooding in SD news neighborhoods is the relief Bloomberg requested, the record only addressed SD neighborhood characteristics, and there is no reason to grant relief beyond that

¹⁹ *Id.*

²⁰ See Bloomberg June 21 HD Filing at 5, Ex. A (“Moreover, as can be seen from looking at the channels, BTV and BTV-HD are, in fact, different, as is CNBC.”).

²¹ See Bloomberg June 21 HD Filing at Ex. A.

²² Letter from David H. Solomon and J. Wade Lindsay, Counsel for Comcast, to William T. Lake, Chief, Media Bureau, FCC, MB Dkt. No. 11-104, Decl. of Mark A. Israel, at 2-3 (filed June 21, 2012) (“Comcast June 21 HD Filing”).

²³ See *Neighborhood Order* at 4891-4892, ¶ 2.

requested in the Complaint.²⁴ Indeed, Bloomberg’s Complaint stated that BTV was not even carried in HD by Comcast at that time.²⁵

As the Bureau correctly explained:

Bloomberg’s complaint framed the issue that we considered in the *Neighborhood Order*: whether the news neighborhooding condition entitles Bloomberg SD to carriage in Comcast’s SD news neighborhoods. We concluded that it does. Therefore, we clarify that the Neighborhood Order requires Comcast to place Bloomberg SD in SD neighborhoods. Because of the limited scope of Bloomberg’s complaint and the proceedings on the complaint, we need not decide at this time how the condition applies to HD carriage.²⁶

Because SD and HD channels are different, have different technical characteristics and sometimes different content, Comcast cannot substitute BTV-HD for BTV-SD to fulfill the neighborhooding condition.

Comcast not only acknowledged this fact but went further, arguing that this Complaint could not be used to seek carriage in an HD neighborhood.²⁷ Comcast specifically said Bloomberg could not “seek to include BTV in an HD neighborhood.”²⁸ It is ironic that Comcast **now** argues that being included in an HD neighborhood is the only relief to which Bloomberg is entitled.

²⁴ Complaint, *Bloomberg, L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104 (filed June 13, 2011) (“Complaint”). Granting SD relief only is consistent with the requirement of the Commission’s Rules: “The petition or complaint shall state the relief requested” and shall “state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested.” 47 C.F.R. § 76.7(a)(4).

²⁵ Complaint at 10, ¶ 23.

²⁶ *Clarification Order* at 9491, ¶ 9.

²⁷ Answer of Comcast Cable Communications, LLC, *Bloomberg, L.P. v. Comcast Cable Communications, LLC*, MB Dkt. 11-104 (filed July 27, 2011) (“Comcast Answer”).

²⁸ Comcast Answer at 21, n.71; *see also* Reply of Bloomberg L.P. to Answer of Comcast Cable Communications, LLC, *Bloomberg, L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104 at 21 (filed Aug. 30, 2011) (“Bloomberg Reply”). Bloomberg clarified that “because Comcast does not widely carry BTV’s HD feed, Bloomberg currently has not requested that BTV be carried in any HD news neighborhood. Bloomberg reserved “the right to seek relief under the news neighborhooding condition as it would apply to the HD feed of BTV in any HD news neighborhood.” *Id.* at n.51.

The *Clarification Order* simply determined that Bloomberg’s Complaint only requested neighborhooding for BTV-SD and Comcast is required to neighborhood BTV in SD news neighborhoods.²⁹ The Bureau was careful not to make any statements regarding the carriage of BTV-HD because no such relief was requested by Bloomberg.³⁰

4. The Clarification Order Did Not Expand the Scope of the Neighborhooding Condition or Impose any Additional Burdens on Comcast

Bloomberg has previously noted that the *Neighborhood Order* preserved Comcast’s First Amendment rights despite Comcast’s attempt to avoid its obligations by alleging otherwise.³¹ The *Clarification Order* does likewise. If the Commission reviews the Bureau’s *Neighborhood Order* and *Clarification Order* through the prism of a First Amendment analysis, the Bureau’s interpretation more than satisfies the applicable intermediate scrutiny standard. It “advances important governmental interests...and does not burden substantially more speech than necessary to further those interests.”³² The FCC has long established the substantial interest it has in the promotion of news programming. The Neighborhooding Condition “promotes the substantial government interest of promoting diversity, competition, and independence in the news programming marketplace.”³³ Moreover, it is narrowly tailored: (i) it does not represent “a requirement that Comcast affirmatively undertake neighborhooding; and (ii) it does not apply to any programming genre except news, and only benefits a subcategory—independent news. The Bureau’s interpretation of the *Neighborhooding Condition* in the *Neighborhooding Order* and the *Clarifications Order* merely applies the policy that the

²⁹ *Clarification Order* at 9491, ¶ 9.

³⁰ *Id.*

³¹ See Bloomberg Opposition to Application for Review of Comcast Cable Communications, *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104, at 23-24 (filed June 18, 2012) (“Bloomberg Opposition to Comcast Initial Application for Review”).

³² *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997).

³³ *Neighborhood Order* at 4902, n. 83.

Commission imposed in the *Merger Order* and that Comcast accepted. Thus, the *Neighborhood Order* and the *Clarification Order* pass any reasonable constitutional test under intermediate scrutiny.

a. The Neighborhooding Condition applies to all independent news networks

The Neighborhooding Condition, on its face, is not limited to SD or HD programming 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.**³⁴

When Bloomberg filed its Complaint, however, it limited its Complaint to SD carriage. Carriage of the HD feed was not an issue as Bloomberg had just rolled out its HD service. Since SD and HD feeds of a programming network are demonstrably different and not interchangeable, the Bureau correctly determined in the *Neighborhood Order* that, because Bloomberg’s Complaint was limited to SD carriage, Bloomberg is entitled to relief in SD news neighborhoods to remedy the harm in its Complaint.

Comcast raises a “smokescreen” by incorrectly arguing that the *Clarification Order* 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.³⁵ Bloomberg’s Complaint requested neighborhooding in all SD news neighborhoods,³⁶ so it was proper for the Bureau to address implementation of the neighborhooding condition for the SD feed only.

³⁴ *Merger Order* at 4288, ¶ 122 (emphasis supplied).

³⁵ See Comcast HD Application for Review at 1.

³⁶ See Bloomberg Initial Application for Review at 7.

Comcast also incorrectly claims that neighborhooding BTV in an HD neighborhood satisfies the Neighborhooding Condition because the condition does not specify SD or HD carriage and the condition only requires neighborhooding in a single neighborhood: “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.”³⁷

First, Comcast selectively quotes from the Neighborhooding Condition, failing to acknowledge that the “a neighborhood” phrase is from the antecedent, not the part of the condition that actually orders placement. The Neighborhooding Condition actually reads that if Comcast carries news channels in “a neighborhood” then Comcast must carry independent news channels “in that neighborhood.” As Bloomberg has explained at length, Comcast should not be able to create a news neighborhood and then satisfy the condition by placing independent news channels not “in that neighborhood” as directed by the Commission, but in some other neighborhood—be it SD or HD.³⁸ Bloomberg is aware of no other circumstance in which the Commission has adopted conditions to address the potential competitive harm from a merger, and then allowed the incumbent to pick how the condition would be implemented.

The Bureau also concluded in the *Clarification Order* that the relief granted in the *Neighborhood Order* is limited to SD neighborhoods because it was the relief Bloomberg requested, the record only addressed SD neighborhood characteristics, and there is no reason to grant relief beyond that requested in the Complaint.³⁹ Indeed, Bloomberg’s Complaint stated that BTV was not even carried

³⁷ Comcast HD Application for Review at 3.

³⁸ See Bloomberg Initial Application for Review at 7.

³⁹ This is consistent with the requirement of the Commission’s Rules: “The petition or complaint shall state the relief requested” and shall “state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested.” 47 C.F.R. § 76.7(a)(4).

in HD by Comcast at that time.⁴⁰ Comcast not only acknowledged this fact but further stated that Bloomberg could not “seek to include BTV in an HD neighborhood” at that time.⁴¹

Further, the record evidence submitted by the parties and considered by the Bureau dealt solely with SD news neighborhoods. The experts for both parties excluded HD programming analysis from their reports.⁴² Bloomberg’s expert witness excluded HD channels from his analysis.⁴³ Comcast’s expert witness Michael Egan did not include HD channels in his news neighborhood analysis.⁴⁴ Comcast’s expert Mark Israel also did not include HD channels in his analysis.⁴⁵

Finally, in its Motion for Expedited Stay, Comcast erroneously argued that there is “no support” in the *Neighborhood Order* for the conclusion that Comcast may not satisfy the Neighborhooding Condition by placing BTV in an HD neighborhood, but instead must place BTV in an SD neighborhood.⁴⁶ However, this was clearly wrong. The Bureau did not consider the placement of BTV in an HD neighborhood as adequate to meet the requirements of the Neighborhooding Condition. In footnote 88 of the *Neighborhood Order*, the Bureau explained that Comcast’s expert, Mark Israel, indicated in his analysis that “there are at least 106 cable headends in the relevant DMAs that carry Bloomberg Television, have a news neighborhood, and do not include

⁴⁰ See Complaint at 10, ¶ 23; *supra*, note 28.

⁴¹ *Supra*, note 28.

⁴² See Comcast Answer, Ex. 4, Declaration of Michael Egan, at Attachment A, 2; *see also* Bloomberg Reply at Ex. A, Reply Declaration of Gregory S. Crawford, ¶ 53.

⁴³ Complaint at Ex. F, ¶ 51.

⁴⁴ Comcast Answer, Ex. 4, Declaration of Michael Egan, at Attachment A, 2 (“While they were categorized as news channels, HD news channels were not subsequently included for news neighborhood analysis.”).

⁴⁵ *Id.*, Ex. 5 at 4, Declaration of Mark A. Israel (“For purposes of my analysis, I consider only standard-definition English-language channels identified as carrying news programming to be defined as ‘news channels.’”).

⁴⁶ Motion for Expedited Stay of Comcast Cable Communications, LLC, *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104, at 11 (filed June 18, 2012) (“Comcast Motion for Stay”).

Bloomberg in a neighborhood” and concluded that “there is no factual dispute about whether these headends carry Bloomberg outside of a neighborhood.”⁴⁷ Mr. Israel’s analysis explicitly did not consider the existence of HD news neighborhoods and whether BTV was carried in any HD neighborhoods in these 106 systems.⁴⁸ By adopting Mr. Israel’s analysis and requiring Bloomberg to be neighborhooded based on an analysis that did not even consider HD neighborhoods, the Bureau has made it clear that it did not consider HD neighborhoods. Comcast, therefore, cannot fulfill its neighborhooding requirements by placing BTV in an HD neighborhood. It would be illogical to allow Comcast to meet its obligations set forth in the *Neighborhood Order* for these 106 systems by adding BTV to an HD neighborhood when the existence of HD neighborhoods was not even part of the Bureau’s analysis or Comcast’s expert’s own analysis that was the basis for indentifying these 106 systems.

Bloomberg’s complaint discusses the status of SD news neighborhood at length but does not address HD neighborhoods at all.⁴⁹ After the *Neighborhood Order* was adopted, the Media Bureau did request legal arguments from each party regarding whether carrying BTV only in an HD news neighborhood meets the requirements of the *Neighborhood Order*. Bloomberg and Comcast each filed their positions on the issue with the Commission on June 19, 2012,⁵⁰ and responded to each other’s

⁴⁷ *Neighborhood Order* at 4903, n.88.

⁴⁸ Comcast Answer, Ex. 5 at 4, ¶16 (“For the purposes of my analysis, I consider only standard-definition English-language channels identified as carrying news programming to be defined as ‘news channels.’”).

⁴⁹ See, e.g., Complaint at 14, ¶ 59; *Id.* at 15, ¶¶ 64-65; *Id.* at 19, ¶ 76. No similar language discussing HD appears in the discussion of the news neighborhooding condition. The *Merger Order* specified that “the program access conditions and arbitration remedies apply to high-definition (HD) feeds of any network whose standard definition (SD) feed is subject to the program access rules.” *Merger Order* at 4260, ¶ 54.

⁵⁰ Bloomberg June 19 HD Filing; Letter from David H. Solomon and J. Wade Lindsay, Counsel for Comcast, to William T. Lake, Chief, Media Bureau, FCC, MB Dkt. No. 11-104 (filed June 19, 2012) (“Comcast June 19 HD Filing”).

submissions on June 21, 2012.⁵¹ However, the record in the Complaint proceeding, which provided the basis for the *Neighborhood Order* and *Clarification Order*, involves SD, rather than HD, channels. Therefore, allowing Comcast to satisfy the Neighborhooding Condition by placing BTV in HD neighborhoods would involve a remedy that does not address the harm alleged (SD neighborhooding) and is not supported by the record.

Significantly, Comcast recently objected to relief beyond the scope of that sought by the complainant in another matter, arguing that “the Initial Decision, however, awards relief that goes far beyond redressing that supposed harm.”⁵² In fact, in that case, the Commission agreed, concluding the record was not sufficiently developed and the complaining party did not seek the remedy:

We do, however, agree with Comcast that the record does not sufficiently establish that Tennis Channel’s ability to compete fairly was unreasonably restrained by its channel placement. In June 2009, when Tennis Channel sought broader carriage from Comcast, it did not seek better channel placement. In the proceedings before the ALJ, Tennis Channel never sought better channel placement as a remedy. Because channel placement was not at the heart of the dispute between Comcast and Tennis Channel, and because Tennis Channel did not seek better channel placement as a remedy, the record on the effect of Tennis Channel’s placement was underdeveloped. ... Tennis Channel did not significantly develop this issue and did not seek this remedy, and therefore we disagree with the ALJ that equitable channel placement is an appropriate remedy based on the record developed in this case.”⁵³

Similarly here, Bloomberg did not seek an HD remedy and neither Bloomberg nor Comcast developed the factual record on the HD issue.

⁵¹ Bloomberg June 21 HD Filing; Comcast June 21 HD Filing.

⁵² *The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Comcast Exceptions to Initial Decision, MB Dkt. No. 10-204, at 38, filed Jan. 19, 2012.) (“Comcast Exceptions to Initial Decision”).

⁵³ *Tennis Channel* at 8543, ¶ 91.

b. Comcast is trying to expand its options to comply with the Neighborhooding Condition at the expense of independent news programming

The *Clarification Order* is also consistent with the Neighborhooding Condition because the Bureau concluded that Bloomberg was entitled to relief for its SD feed and that Bloomberg only requested SD relief in its Complaint. Bloomberg specifically excluded any request for HD relief from its Complaint because Bloomberg had only begun rollout of its BTV-HD service when it filed its Complaint.⁵⁴ Comcast agreed in its Answer that it was excluding HD from its analysis because it did not have a license to carry BTV-HD.⁵⁵ Significantly, Comcast argued that Bloomberg is not entitled to HD relief.⁵⁶

Comcast, however, is trying to expand its options to comply with the Neighborhooding Condition in this proceeding by insisting the record supports its intention to neighborhood BTV in HD, rather than SD, news neighborhoods.⁵⁷ The Bureau has consistently directed Comcast to place BTV-SD in its SD news neighborhoods.⁵⁸ Comcast seeks to further delay that process by insisting that complying with the Neighborhooding Condition via neighborhooding BTV in HD only satisfies the Condition.⁵⁹ For all the reasons previously discussed, it does not.

⁵⁴ Complaint at 10, ¶ 23.

⁵⁵ See Comcast Answer at 21, n.71.

⁵⁶ See Comcast Answer at 21, n.71.

⁵⁷ See Comcast HD Application for Review at 9; see also Comcast, Motion for Partial Extension of Time, *Bloomberg, L.P. v. Comcast Cable Communications*, MB Dkt. No. 11-104, at 2-3 (filed June 1, 2012) (“Comcast Motion”); see also Comcast June 19 HD Filing at 3; see also Comcast June 21 HD Filing at 6-7.

⁵⁸ *Neighborhooding Order* at 4894, ¶ 6; *Clarification Order* at 9491, ¶ 9; Electronic correspondence from Sarah Whitesell, FCC, to Greg Babyak *et al.*, Bloomberg, Stephen Díaz Gavin *et al.*, Counsel for Bloomberg, & Neil Smit *et al.*, Comcast, Arthur J. Burke *et al.*, Counsel for Comcast (June 29, 2012) (directing Comcast to Neighborhood BTV on 126 channel lineups by July 1, 2012).

⁵⁹ See, e.g., Comcast HD Application for Review at 9; Letter from Arthur J. Burke, Davis Polk & Wardwell LLP, Counsel to Comcast, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-104, at Ex. 1 (filed May 22, 2012) (“May 22 Letter”).

c. Comcast's proposed compliance option to neighborhood in HD only is unreasonable

Comcast's proposed expansion of its compliance options is unreasonable, and therefore arbitrary and capricious, based on the record in this Complaint proceeding. The record in this proceeding from both Bloomberg and Comcast contains SD rather than HD data. For the Bureau to take any action beyond the record would be arbitrary and capricious. "[T]he key to the arbitrary and capricious standard is its requirement of reasoned decision making: we will uphold the Commission's decision if, but only if, we can discern a reasoned path from the facts and considerations before the Commission to the decision it reached."⁶⁰

In this case, the Complaint did not request that BTV be neighborhooded in HD. The record, including expert testimony submitted by both Bloomberg and Comcast, specifically excludes information about HD neighborhoods. The viewership is significantly different between SD news neighborhoods and HD news neighborhoods. It would not be reasonable, therefore, to determine that neighborhooding BTV in HD neighborhoods is an acceptable method of compliance with the neighborhooding condition.

d. The *Clarification Order* is consistent with Comcast's First Amendment rights

The *Neighborhood Order* and the *Clarification Order* both preserve Comcast's First Amendment rights despite Comcast's attempt to avoid its obligations by alleging otherwise. If the Commission reviews the Bureau's *Neighborhood Order* and *Clarification Order* through the prism of a First Amendment analysis, the Bureau's interpretation more than satisfies the applicable intermediate scrutiny standard. It "advances important governmental interests...and does not burden substantially more speech than necessary to further those interests."⁶¹ The FCC has long established

⁶⁰ *Neighborhood TV Co., Inc. v. FCC*, 742 F.2d 629, 639 (D.C. Cir. 1984).

⁶¹ *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997) ("*Turner IP*").

the substantial interest it has in the promotion of news programming. The Neighborhooding Condition “promotes the substantial government interest of promoting diversity, competition, and independence in the news programming marketplace.”⁶² Moreover, it is narrowly tailored: (i) it does not represent “a requirement that Comcast affirmatively undertake neighborhooding” and (ii) it does not apply to any programming genre except news, and only benefits a subcategory—independent news. The Bureau’s interpretation of the Neighborhooding Condition in the *Neighborhood Order* and the *Clarifications Order* merely applies the policy that the Commission imposed in the *Merger Order* and that Comcast accepted. By directing Comcast to remedy that anti-competitive concern, the Bureau applied the Commission condition in a manner that protects the public’s interest without infringing on Comcast’s First Amendment rights. Thus, the *Neighborhood Order* and the *Clarification Order* pass any reasonable constitutional test under intermediate scrutiny.

Comcast attempts to argue that “the Bureau was obligated to be certain that *any* action it required here was narrowly tailored to serve a compelling government interest.”⁶³ First, contrary to Comcast’s assertions, the Neighborhooding Condition here does not impact “which stations or programs to include in [the cable operator’s] repertoire,”⁶⁴ as Comcast has already chosen to carry BTV. Thus there is no government mandated carriage.⁶⁵ Moreover, the Condition does not distinguish between networks based on the message of the speaker. Rather, because of concerns

⁶² *Neighborhood Order* at 4902, n.83.

⁶³ Application for Review of Comcast Cable Communications, LLC, *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104, at 25 (filed June 1, 2012) (“Comcast Initial Application for Review”).

⁶⁴ Comcast Initial Application for Review at 24.

⁶⁵ Comcast asserts that the “plain language reading of the Condition makes perfect sense, because the neighborhooding condition is a supplement to – not a wholesale substitute for – the program carriage rules.” (Application for Review at 8-9). This reference is completely disingenuous on Comcast’s part, given that it is supporting the wholesale attack on the program carriage process in the Second Circuit, wherein it is claimed that the program carriage regime should be set aside as violating the First Amendment. *See Time Warner Cable, et. al. v. FCC*, Case No. 11-4138 (2d Cir. 2011).

about discrimination by a vertically integrated operator, the Commission adopted certain conditions to protect a group of channels based on economic criteria—financial independence from a cable operator. The Bureau’s application of the Neighborhooding Condition is also consistent with the Commission’s public interest analysis in the *Merger Order* and the First Amendment.

5. Implementation of the *Clarification Order* Will Not Require Major Channel Changes

Neighborhooding is critically important.⁶⁶ BTV needs to be where people watch the news. The FCC has recognized that cable news channels are playing an increasingly important role in keeping the public informed. In fact, viewers are shifting from network news to cable news networks.⁶⁷ With the decreasing popularity of broadcast television, cable news networks, such as BTV, fill the investigative reporting void created by local news operations.⁶⁸

a. Comcast routinely makes channel lineup changes far in excess of the channel changes involved in neighborhooding BTV-SD

The number of channel lineup changes required to implement neighborhooding for BTV is far less than the number of channel changes Comcast routinely makes in a year. Bloomberg introduced evidence in the record that Comcast moved networks *at least 10,625 times* in an approximately eleven-month period in 2010 and 2011.⁶⁹ In the 35 most-populous DMAs, networks

⁶⁶ *Merger Order* at 4283, ¶ 112; *Neighborhood Order* at 4897, ¶ 13; *Clarification Order* at 9489, ¶ 4; Bloomberg Reply at 16.

⁶⁷ FCC, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age* (July 2011) at 103, available at <http://www.fcc.gov/info-needs-communities> (“Future of Media Report”) (“With the rise of cable news 30 years ago, the audience for network news began to erode. Today the combined audience for ABC, CBS, and NBC’s evening news broadcasts is less than 20 percent of the overall television audience—and trends show a continuing loss of about one million viewers per year. Network newscasts still reach a much larger audience than any particular cable news shows, but the abundance of choices has and will continue to erode the reach of network news.”).

⁶⁸ Future of Media Report at 87.

⁶⁹ Bloomberg Reply at 52, Ex. A, ¶ 106.

were relocated thousands of times.⁷⁰ At least 3.6% of networks were relocated in just this eleven-month period.⁷¹ Bloomberg demonstrated in the record that Comcast also regularly relocates networks below channel 100,⁷² which it claimed was particularly difficult to do.⁷³

Comcast originally said it could implement the Bureau's directive to neighborhood BTV "without overly disruptive channel relocations" in over 60% of the affected lineups and needed an extension of time to implement the *Neighborhood Order* for the rest.⁷⁴ To date, Comcast has only neighborhooded BTV on about 40% of the channel lineups it was required to complete by the *Neighborhood Order* and *Clarification Order*.⁷⁵ Consequently, the majority of lineups and vast majority of subscribers who were promised neighborhooding have not yet received it.

Furthermore, based upon data provided by Comcast, the total number of channel lineups that will need to be changed to accommodate neighborhooding of BTV-HD represents less than 1% of the total number of channel changes made by Comcast in the top 35 DMAs between 2010 and 2011, including those that benefitted Comcast affiliated channels.⁷⁶ Additionally, Comcast

⁷⁰ Bloomberg Reply at 52, Ex. A, ¶ 106.

⁷¹ Bloomberg Reply at 52, Ex. A, ¶ 106.

⁷² Bloomberg Reply at 52-53, Ex. A, ¶ 108.

⁷³ See Comcast Initial Application for Review at 14.

⁷⁴ See Comcast Motion at 1. Bloomberg filed a Motion for Extension of Time to respond to Comcast's Motion for Extension of Time on June 11, 2012.

⁷⁵ See May 22 Letter. To the extent that Exhibit 2 of the May 22 Letter purports to exhibit compliance with the news neighborhooding condition by having already placed BTV in a high definition ("HD") channel lineup, Bloomberg objects and reserves its right to have BTV moved to a standard definition ("SD") neighborhood below channel 100.

⁷⁶ Comcast's brief reference to the Commission's stay in the Tennis Channel case is equally unpersuasive. The Tennis Channel case involves a completely different set of facts, including a channel placement remedy that was never sought by the complainant, no guidance on questions of compensation for the tier placement remedy, and an outstanding question of whether the complaint was time-barred. Conversely, in this case, Comcast frequently makes these types of channel changes in the normal course of business, and implementing the news neighborhooding condition can be accomplished with minimal disruption to consumers. Moreover, Bloomberg sought the specific neighborhooding remedy provided by the Commission in the *Merger Order*. Cf. *Tennis Channel* at

customers will continue to benefit not only from an expanded news neighborhood where more channels will be organized by genre but also from independent news reporting finding an audience. In fact, the Commission has specifically recognized “the special importance of news programming to the public interest.”⁷⁷

b. Only minor channel lineup changes are needed to neighborhood BTV

Comcast repeatedly describes a “parade of horrors” that it will need to endure in order to neighborhood BTV and other independent news networks.⁷⁸ Comcast, however, also stated in this proceeding (and others) that the steps it must undertake to neighborhood a channel are virtually identical to the steps it voluntarily takes thousands of times per year to change channel positions of its own choosing on its channel lineups.⁷⁹ Pursuant to the *Clarification Order*, Comcast also successfully neighborhooded BTV on 32 channel lineups without a vacancy near the only SD news neighborhood within 45 days.⁸⁰

8543, ¶ 91 (finding the channel placement remedy ordered by the ALJ was not justified by the record).

⁷⁷ *Merger Order* at 4287, ¶ 122.

⁷⁸ *See, e.g.*, Surreply at 19-20, ¶ 36 (“Any disruption occasioned by these changes, affecting only 5 percent of Comcast’s lineups and an even smaller percentage of its subscribers, cannot be compared to the disruption that would result from Bloomberg’s interpretation of the Condition, which would require reordering 84 percent of Comcast’s lineups and affect the overwhelming majority of its subscribers. Comcast would be required not only to relocate the 1,819 independent news channels in the Relevant DMAs that are not included within a four-channel news grouping, but as explained in Comcast’s Answer, each of those relocations would trigger a cascade of additional channel relocations.”).

⁷⁹ Comcast Motion at 3-4 (“In Comcast’s experience, the best way to eliminate – or at least substantially reduce – this consumer disruption and confusion is to provide timely advance notice to affected subscribers of the impending channel relocations necessary to carry BTV in a ‘news neighborhood.’ The most effective way to provide such notice is, at a minimum, to provide notice of the channel relocation to each customer through a message on his or her bill at least 30 days in advance of the relocation. . . . Moreover, customers have some experience with getting notice of channel relocations from Comcast on their bills and expect to find such notices there.”).

⁸⁰ *Clarification Order* at 9489, ¶ 3 (“[W]e grant Comcast’s request for a brief [45-day] extension of time to comply with the *Neighborhood Order*, as agreed to by the parties.”).

It is disingenuous for Comcast to argue that neighborhooding, a condition that it willingly accepted as part of the approval of its merger with NBCU, is now too burdensome to implement because the Bureau followed FCC precedent and concluded that SD and HD programming feeds are different for purposes of neighborhooding. The Commission must see Comcast's argument for what it is – just another delay tactic to avoid complying with a *Merger Order* condition.

B. BTV Must Be Neighborhooded In An SD News Neighborhood

In Comcast's view, "the [Neighborhooding] Condition is satisfied so long as an independent news network is included in one news neighborhood [even an HD neighborhood], because that accomplishes the goals the Commission sought to serve with this targeted, 'narrowly tailored' condition."⁸¹ Given the extensive findings in the *Merger Order* that Comcast would have both the ability and the incentive to disadvantage rival networks, allowing Comcast to determine in which neighborhood BTV is placed is illogical. Comcast has an incentive to select the news neighborhood that is least likely to shift viewers away from its affiliated networks because Comcast controls the cable pipeline and owns affiliated news networks. If Comcast is only required to neighborhood BTV in one news neighborhood, then it will select the news neighborhood with the lowest viewership,⁸² because that is the least likely location to impact its affiliated news networks. Comcast neighborhooded its own affiliated news networks and most unaffiliated major news networks in "at least one" SD news neighborhood and "at least one" HD news neighborhood.⁸³ Comcast cannot be

⁸¹ Comcast HD Application for Review at 7-8 (emphasis omitted).

⁸² Decl. of Ali Yurukoglu, Exh. 1, ¶¶ 21 (Using the Comcast May 22 Letter channel lineup data, Mr. Yurukoglu estimates the average viewership for SD news neighborhoods below channel 100 is 85.9 percent of the headend's news viewership and the average viewership for SD news neighborhoods above channel 100 is 4.7 percent of the headend's news viewership.) & 54 (Using the TMS channel lineup data, Mr. Yurukoglu estimates the average viewership for SD news neighborhoods below channel 100 is 82.9 percent of the headend's news viewership and the average viewership for SD news neighborhoods above channel 100 is 3.1 percent of the headend's news viewership.).

⁸³ Comcast June 21 Letter, Decl. of Mark A. Israel at 2-3.

permitted to implement the Neighborhooding Condition in a way that defies the Commission's reasoning for adopting the Condition.

Comcast alleges that the Bureau's *Clarification Order* will lead to "independent news networks [receiving] preferential carriage rights as compared to other non-independent news networks, including those unaffiliated with Comcast such as Fox News and CNN."⁸⁴ According to Comcast's own expert, Mark A. Israel, Comcast carries its affiliated programming network, CNBC, in both an SD and an HD neighborhood 81% of the time on Comcast's channel lineups in the top 35 DMAs that have at least one SD and at least one HD neighborhood.⁸⁵ The dual SD and HD neighborhooding numbers are equally as impressive for BTV's largest competitors: CNN (76%), Fox News (79%), Fox Business News (56%), HLN (52%), and MSNBC (38%).⁸⁶

Comcast completed the process of converting its cable systems to digital operations, it continues to expand the number of networks that are available in HD on its channel lineups, and there is nothing in the *Neighborhood Order* or the *Clarification Order* that prevents Comcast from expanding its HD carriage of affiliated and non-affiliated news networks.⁸⁷ Therefore, the *Clarification Order* is consistent with Comcast's practice of dual neighborhooding its affiliated news networks and major news networks and BTV will not receive any "preferential carriage rights."

⁸⁴ Comcast HD Application for Review at 10 (emphasis omitted).

⁸⁵ Comcast June 21 HD Filing, Decl. of Mark A. Israel at 2 ("CNBC is carried in at least one SD neighborhood *and* at least one HD news neighborhood in 81% of such lineups..." (emphasis supplied)).

⁸⁶ Comcast June 21 HD Filing, Decl. of Mark A. Israel at 2-3.

⁸⁷ Press Release, *Comcast Takes Digital upgrade to All Channels in Washington*, (Aug. 10, 2012) available at <http://wacomcast.com/2012/08/10/comcast-washington-digital-upgrade/> ("By moving to all digital, Comcast can continue to offer our customers more HD channels... Our strategy has been about giving customers 'more' – more HD..."); *Comcast to convert Yuba, Calif. System to all-digital programming lineup*, FierceCable, (April 12, 2012) available at <http://www.fiercecable.com/story/comcast-convert-yuba-calif-system-all-digital-programming-lineup/2012-04-12> ("Comcast continues to convert more cable systems to all-digital programming lineups...").

The location of a news neighborhood on a channel lineup directly impacts the viewership of the channels in that news neighborhood. For example, news neighborhoods located below channel 100 garner nearly 90% of the news viewership compared to less than 5% in upper news neighborhoods.⁸⁸ The benefits of neighborhooding and the harms that the Neighborhooding Condition was designed to alleviate are not met if BTV is only neighborhooded in one news neighborhood above 100. As explained in the Declaration of Ali Yurukoglu, almost all consumers only view the news neighborhood below channel 100. If BTV is not placed in this neighborhood, then the public interest is not being served and the Neighborhooding Condition is not being applied in a manner to meet the needs of the public interest.

C. The FCC Has The Authority To Enforce The Neighborhooding Condition

The Commission adopted and Comcast accepted the Neighborhooding Condition as part of the Commission's approval of Comcast's merger with NBCU. The Commission has the legal authority to enforce the *Merger Order* conditions, including the Neighborhooding Condition.⁸⁹ At this time, BTV is the only independent news network to request neighborhooding. After nearly two years, BTV still is not neighborhooded in the vast majority of the markets identified by Comcast in

⁸⁸ Decl. of Ali Yurukoglu, Ex. 1, ¶¶ 21 (Using the Comcast May 22 Letter channel lineup data, Mr. Yurukoglu estimates the average viewership for SD news neighborhoods below channel 100 is 85.9 percent of the headend's news viewership and the average viewership for SD news neighborhoods above channel 100 is 4.7 percent of the headend's news viewership.) & 54 (Using the TMS channel lineup data, Mr. Yurukoglu estimates the average viewership for SD news neighborhoods below channel 100 is 82.9 percent of the headend's news viewership and the average viewership for SD news neighborhoods above channel 100 is 3.1 percent of the headend's news viewership.).

⁸⁹ See *Merger Order* at 4242, ¶ 6. The Commission's enforcement of the conditions in the *Merger Order* includes a Consent Decree, the *Neighborhood Order*, the *Clarification Order*, an arbitration award against Comcast for failure to comply with the benchmark condition, and a pending petition for the enforcement of the unfair online competition practices condition. See *Comcast Corp., Order, Consent Decree*, 27 FCC Rcd 6983 (EB 2012); Letter from Monica Desai, Counsel to Project Concord, Inc., to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 10-56 (filed July 11, 2012) (submitting arbitration award); Petition to Enforce Merger Conditions of Public Knowledge, *Applications of Comcast Corp., General Electric Co. & NBCUniversal, Inc., For Consent to Assign Licenses and Transfer Control of Licenses*, MB Dkt. No. 10-56 (filed Aug. 1, 2012).

its May 22 Letter.⁹⁰ This cannot continue. The Neighborhooding Condition is limited to only seven years. The Commission must direct Comcast to immediately neighborhood BTV on the remaining channel lineups.

D. Neighborhooding BTV Will Not Hinder The Development And Expansion Of HD Programming

Comcast's allegations that the *Clarification Order* will hinder the development of HD programming are strain credulity.⁹¹ If Comcast consumers demand HD programming, Comcast will provide it to them.⁹² Additionally, Comcast reports that it completed the process of converting its cable systems to digital operations, which increases operating efficiencies.⁹³ Enforcement of the Neighborhooding Condition will not hamper the natural transition of viewers from SD to HD because the Condition is limited to an additional five years and Comcast has the ability to change its channel lineups at anytime. Consumer demand and Comcast operating decisions will drive the

⁹⁰ Comcast May 22 Letter at Ex. 1.

⁹¹ Comcast Application for Review at 12-13 (“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 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.”).

⁹² *Comcast announces digital transition*, The Daily Progress, (February 12, 2012), available at <http://www2.dailyprogress.com/business/2012/feb/21/comcast-announces-digital-transition-ar-1705800/> (“Spokeswoman Alisha Martin said the moved dubbed ‘World of More,’ will allow Comcast to add 50 new HD channels over the next few months, increase online speeds and position it for future service enhancements); *Cable Operators Progressing Slowly Toward All-Digital Systems*, Communication Daily, (Feb. 21, 2012)(“Comcast will turn off all analog channels on certain systems across the U.S. on a phased-in basis this year...”).

⁹³ Comcast, *Q4 and Full Year 2011 Comcast Corporation Earnings Conference Call*, (Feb. 15, 2012) available at <http://files.shareholder.com/downloads/CMCSA/1702048620x0x587708/dd100161-f0c2-4e1e-bfb7-0f30e040612e/CMCSA-Aug-01-2012.pdf> (“In total, we have deployed over 23 million digital adapters since the inception of the All-Digital project which is now complete.”).

amount of SD and HD programming that Comcast decides to carry, not the Neighborhooding Condition.

Comcast further argues that the Neighborhooding Condition “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 HD news lineups.”⁹⁴ Comcast’s argument is absurd. Comcast routinely makes thousands of channel lineup changes each year in order to meet consumer demands. By Comcast’s own admission, BTV needs to be neighborhooded on only a limited number of channel lineups and those channel lineup changes are less than 1% of the channel lineup changes that Comcast voluntarily makes on an annual basis.⁹⁵ Any impact that neighborhooding may have on the development of HD is minimal.

⁹⁴ Comcast HD Application for Review at 9-10.

⁹⁵ See Bloomberg Reply at 52-53, Ex. A ¶¶ 106, 108.

III. CONCLUSION

WHEREFORE, in light of the foregoing, Bloomberg respectfully requests that the Commission affirm that the *Clarification Order* and the guidance provided therein is consistent with the Neighborhooding Condition, deny Comcast's request for additional guidance, and direct Comcast to carry BTV in all SD news neighborhood.

Respectfully submitted,

BLOOMBERG L.P.

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Dated: September 28, 2012

EXHIBIT 1
Declaration of Ali Yurukoglu

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

DECLARATION OF ALI YURUKOGLU

I, Ali Yurukoglu, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Ali Yurukoglu. I am currently an Assistant Professor of Economics in the Graduate School of Business at Stanford University in Stanford, California, and a Faculty Research Fellow for the National Bureau of Economic Research. I received a Ph.D. in Economics from New York University in 2009.

2. I conduct research on topics in industrial organization. Much of my research has focused on analyzing the cable and satellite television industries. Particularly relevant for this proceeding, I have evaluated conditions of demand and supply within the cable television industry and the consequences of regulation on economic outcomes in cable markets. I have published academic articles in such outlets as the *American Economic Review*. My works include: “The Welfare Effects of Bundling in Multichannel Television Markets,” (with Gregory S. Crawford), forthcoming, *American Economic Review*. I have attached my CV as Appendix A to this Declaration.

3. For the National Bureau of Economic Research (“NBER”), I was chosen as a Faculty Research Fellow. The NBER is the largest economics research organization in the United States.

4. On January 18, 2011, the Federal Communications Commission (“FCC” or “Commission”) approved, with conditions, the assignment and transfer of broadcast, satellite, and other radio licenses from the General Electric Company to Comcast Cable Communications, LLC (“Comcast”).¹ Comcast consummated the approved transactions subject to the Commission’s conditions.

5. The conditions that Comcast voluntarily accepted included the so-called “news neighborhooding” condition, whereby “if Comcast now or in the future carries news and/or business news channels in a neighborhood...,” Comcast is required to carry all independent news channels in that news neighborhood.²

6. On June 13, 2011, Bloomberg L.P. (“Bloomberg”) filed a complaint with the FCC alleging that Comcast was not complying with the news neighborhooding condition. The FCC granted the Complaint in large part on May 2, 2012.³ In the *Neighborhood Order*, the FCC directed Comcast to “carry Bloomberg [Television] in a news neighborhood on certain headends, and direct[ed] Comcast to file more information to confirm the facts necessary to determine whether

¹ *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licenses, Memorandum Opinion and Order*, 26 FCC Rcd 4238 (2011) (“*Merger Order*”).

² *Merger Order*, ¶ 122.

³ *Bloomberg L.P. v. Comcast Cable Communications, L.P., Memorandum Opinion and Order*, 27 FCC Rcd 4891 (MB 2012) (“*Neighborhood Order*”).

relief is appropriate on other headends.”⁴ Specifically, with respect to headends in the top-35

Designated Market Areas (“DMAs”) the *Neighborhood Order* directed Comcast to:

(i) within sixty days of the release of this Order [i.e., by July 1, 2012], 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 [i.e., by May 22, 2012], 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 [i.e., by May 22, 2012], 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.⁵

7. On May 22, 2012, Comcast provided to Bloomberg and filed with the Commission a letter, with accompanying detailed channel lineup data, that Comcast says identifies (1) “any headend that carries Bloomberg Television, has a news neighborhood as defined herein, and does not include Bloomberg Television within a news neighborhood,” (2) “channel lineup information about any headend listed [that does not include Bloomberg Television in a news neighborhood],” and (3) “channel lineup information about any headend ... that already carries Bloomberg Television within a news neighborhood.”⁶ More specifically, in Exhibit 1 to its May 22 letter, Comcast identified “Lineups in Comcast Cable Headends in the Top-35 DMAs that Carry BTV and Have a News Neighborhood and Do Not Carry BTV in Any News Neighborhood,” indexed by Comcast’s assigned channel lineup identification number (“CLSID”) (“Exhibit 1 Data”).

⁴ *Neighborhood Order*, ¶ 2.

⁵ *Neighborhood Order*, ¶ 6.

⁶ Letter from Arthur J. Burke, Davis Polk & Wardell LLP, Counsel to Comcast, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Dkt. No. 11-104 (filed May 22, 2012) (listing 150 headends on Exhibit 1 and 39 headends on Exhibit 2) (“May 22 Letter”).

8. On August 14, 2012, the FCC explained in the *Clarification Order* “that the *Neighborhood Order* decided only the issue of whether BTV’s SD programming [] is entitled to carriage in an SD ‘news neighborhood’ on Comcast’s channel lineups. The issue of whether and how the news neighborhooding condition applies to HD news channels or neighborhoods was not raised in the Media Bureau proceeding, and the *Neighborhood Order* did not address the application of the condition with respect to HD news channels and neighborhoods.”⁷ The FCC also adopted a stay: “we stay, on our own motion, the effectiveness of the *Neighborhood Order* with respect to any headend that (i) carries BTV SD, (ii) does not carry BTV SD in an SD news neighborhood, (iii) has multiple news neighborhoods (regardless of whether those neighborhoods are HD or SD), and (iv) has no vacant channel adjacent to any SD news neighborhood.”⁸

9. I was recently asked by Bloomberg to calculate the average share of total news viewership for each SD news neighborhood on Comcast’s cable systems in the top-35 DMAs that have two SD news neighborhoods and carry BTV but not in an SD news neighborhood. I calculated the requested viewership shares using the Exhibit 1 Data and publicly-available Nielsen Media Research (“Nielsen”) ratings information from the website “TV By the Numbers” (<http://tvbythenumbers.zap2it.com/category/news/cable-news/>). I then calculated the requested viewership shares using “channel lineup data” provided by Tribune Media Services (“TMS”) and the Nielsen ratings information from “TV By the Numbers.”

10. I will first discuss my analysis and results from my calculations using the Exhibit 1 Data and the Nielsen ratings information from “TV By the Numbers.” I will then discuss my

⁷ *Bloomberg L.P. v. Comcast Cable Communications, L.P., Memorandum Opinion and Order*, DA 12-1338, ¶ 3 (MB rel. Aug 14, 2012 (“*Clarification Order*”).

⁸ *Clarification Order*, ¶ 3.

analysis and result from my calculations using the TMS channel lineup data and the Nielsen ratings information from “TV By the Numbers.”

Viewership Analysis Conducted Using Exhibit 1 Data

11. To create the dataset used in the analysis, I uploaded the Exhibit 1 Data filed by Comcast into Stata, a widely used Econometric software package.

12. Using the definition of “independent news channel” from the *Neighborhood Order*,⁹ I next defined the set of possible news, business news, and public affairs channels that were to be the focus of my analysis. I began by identifying the most widely available (national) news, public affairs, and business news channels. These included but were not limited to: (a) the most widely available national cable news networks - Cable News Network (“CNN”), Fox News Channel, Headline News, and MSNBC, (b) national cable public affairs networks - CSPAN, CSPAN2, and CSPAN3, and (c) national cable business news networks - CNBC, BTV, Fox Business Channel, and CNBC World. I also identified (a) High-Definition (“HD”) feeds of those channels, (b) local, state, and regional news and public affairs channels, (c) an international news channel - CNN International - and (d) a single on-demand news channel. These were determined to be news, business news, and/or public affairs channels, based on individual examination of channel names and information on the types of programming provided on specific channels, by both me and my research support team. I did the analysis including Current TV, BBC World News, MHz Worldview and Link TV as news channels.

13. Using this definition of news neighborhood, I analyzed how many Comcast headends in the top-35 Nielsen DMAs carry BTV, but not in a news neighborhood, and contain two SD news neighborhoods.

⁹ *Neighborhood Order*, ¶ 6 (defining 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. in the U.S. Eastern Time Zone’”).

14. I next used the publicly-available Nielsen ratings information from the website “TV By the Numbers” (<http://tvbythenumbers.zap2it.com/category/news/cable-news/>) to obtain a random sample of 50 days of daily (total day, persons above 2 years old) viewership ratings from the past 12 months for CNBC, CNN, Fox Business News, Fox News Channel, Headline News, and MSNBC. The sample size of 50 provides estimates of each rated channel's viewership with margins of error between 2 and 10 percent of their average viewership numbers.

15. Nielsen tracks CNN International, some local news channels, and there is some evidence that it tracks Current TV, but publicly available data was not obtainable. Nielsen does not track the other news channels that are in some of the news neighborhoods. I made assumptions for the viewership of these channels as a proportion of viewership of Fox Business News.

16. I assumed that most other news channels have the viewership of Fox Business News divided by 4 for the results reported here. The development of a more accurate assumption using more popular non-rated channels (Bloomberg, Current TV, Local News such as NECN, NY1, and News Channel 8) and channels with less viewership (CSPAN2, CSPAN3) was not possible based on publicly available Nielsen data. I decided that 1/4th of Fox Business News was a reasonable assumption.

17. I calculated the sum of average viewership of the news channels for each headend, and the same for each news neighborhood on each headend. The total viewership does not equal 100% because there is some news viewership that does not belong to a neighborhood (non-neighborhooded news channels).

18. The numbers are not exact because they are based on national viewership, and not tailored to each headend's local viewership. (For example, Fox News could have a higher share in southern DMA's, and the number for southern headends does not reflect that.).

19. Finally, there is some sampling error in the national ratings which is unknown because “TV By the Numbers” does not report the margin of error in Nielsen’s estimates.

20. These steps resulted in the final dataset of news channels that I used in performing my analysis of Comcast’s neighborhoods of news and public affairs channels.

21. My analysis, including the assumption that the news channels for which ratings were unavailable from a publicly-available source had viewership equal to Fox Business News divided by 4, reflects the following:

In the top 35 DMAs, when there are two news neighborhoods (one in positions 1-99 and one above 100), I estimate that the average share of total news viewership that belongs to the first news neighborhood (1-99) is 85.9 percent of the headend’s news viewership. The average share of viewership that belongs to the second news neighborhood (100+) is 4.7 percent of the headend’s news viewership. In some headends, the percentage of viewership belonging to the second news neighborhood (100+) could be as low as 0.5 percent.

Viewership Analysis Conducted Using TMS Channel Lineup Data

22. After Bloomberg obtained the channel lineup data from TMS, I was provided with access to it so that I could conduct my analysis. The data provided information on channel lineups for all of the major providers of multichannel video programming (“MVPD”) within the United States as of February 24, 2012.

23. In my experience, TMS is generally considered a reputable and reliable source of cable channel lineup data for economic research projects. TMS collects channel lineup information from individual cable and satellite television systems; verifies, cleans, and standardizes the data; and

then licenses it to firms for a variety of reasons, most commonly for the provision of electronic program guides across media. It is my understanding that TMS regularly polls MVPDs for channel lineup information. Comcast's XFINITY TV web site (<http://xfinity.comcast.net/tv-listings>) also states "TV listings by Tribune Media Service," which suggests that Comcast itself relies upon TMS data for its cable system lineups, in particular, and, therefore, TMS data can be considered reliable.

24. The data provided to Bloomberg by TMS came in the form of three relational databases. The databases separately report information maintained by TMS as of May 4, 2011 and February 24, 2012. The first database ("lineup") reports information at the level of a headend id-device-channel position. A headend is a facility operated by a cable system that, among other things, receives television programming (usually by satellite), organizes that programming into channel lineups, and distributes those lineups to devices (usually) attached to customers' televisions according to the type of service they have purchased from the system.

25. The second database ("headend") reports information at the level of the headend-zip code. It reports, among other things, the zip codes served by each headend, the community served in that zip code, the Designated Market Area ("DMA") for that zip code, the rank of that DMA among the 210 DMAs in the United States, and the Multiple System Operator (MSO) that owns that headend (e.g., Comcast Cable Communications, LLC). A DMA is a definition of television markets maintained by Nielsen.

26. The third database ("station") reports information at the level of the station for each station offered on any headend. It reports the channel name for that station and a corresponding identification number assigned by TMS.

27. To create the raw dataset used in the analysis, I read in each of these relational databases using Stata, a widely used Econometric software package, kept one zip code for each

headend, kept only those headends indicated as being owned by Comcast and merged the databases together according to their common fields (headend id and station number).

28. Using the definition of “independent news channel” from the *Neighborhood Order*,¹⁰ I next defined the set of possible news, business news, and public affairs channels that were to be the focus of my analysis. I began by identifying the most widely available (national) news, public affairs, and business news channels. These included but were not limited to: (a) the most widely available national cable news networks - Cable News Network (“CNN”), Fox News Channel, Headline News, and MSNBC, (b) national cable public affairs networks - CSPAN, CSPAN2, and CSPAN3, and (c) national cable business news networks - CNBC, BTV, Fox Business Channel, and CNBC World. I also identified (a) High-Definition (“HD”) feeds of those channels, (b) local, state, and regional news and public affairs channels, (c) an international news channel - CNN International - and (d) a single on-demand news channel. These were determined to be news, business news, and/or public affairs channels, based on individual examination of channel names and information on the types of programming provided on specific channels, by both me and my research support team. I did the analysis including Current TV, BBC World News, MHz Worldview and Link TV as news channels.

29. An initial examination of the channels provided by each headend on each channel position illustrated an important issue with the raw TMS data: there were many instances of multiple channels being offered on a single channel position. This was an important problem, as defining a channel neighborhood necessarily requires accurate information on which channel(s) are being provided on which channel positions.

¹⁰ *Neighborhood Order*, ¶ 6 (defining 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. in the U.S. Eastern Time Zone’”). .

30. Further examination of the data indicated that most of these instances were due to headends providing multiple channel lineups according to the device households were using to receive the programming. Channels being delivered to different devices naturally shared channel positions as, for example, channel 5 for a headend's Analog device need not have the same channel as channel 5 for that headend's Digital device.

31. To address this problem, I first defined a channel lineup as the set of channel positions provided by each device on a particular headend. For example, there may be two channel lineups on a headend: one delivered to Analog devices (with 73 channel positions) and one delivered to Digital (non-rebuild) devices (with 536 channel positions).

32. For each headend that provided more than one lineup that included a Digital (non-rebuild) lineup, I kept that lineup. This decision was made because Comcast is migrating quickly to all-digital systems, and digital lineups are therefore more relevant for the future than are analog lineups. For the one headend that had an Analog and Cable-ready TV lineup, I kept the Analog lineup.

33. Including a single lineup per Comcast headend resolved many, but not all, of the instances of multiple channels per channel position. Given the importance of accurately identifying which channel was in a channel position for the purposes of defining channel neighborhoods, I determined to resolve all of these instances. I did so in three steps.

34. First, I determined if the duplicated channels on a given channel position were effectively the same channel. I determined this was so if they shared the same channel name and then dropped all but one of the repeated channels for each channel position.

35. Second, I determined if at least one of the channels on the duplicated channel position was a possible news channel. If none were a possible news channel, then it was not going to influence how I later calculated neighborhoods of news channels and it didn't matter if it was a duplicated channel position.

36. Third, I resolved the last remaining duplicates, which included a possible news channel. Some of the problems arose due to different feeds of CNN en Español (Mexico and US vs. United States) being provided in the same channel position. I decided to treat these as the same channel by dropping one of them and renaming the other, "CNN en Español – All Feeds". For the remaining headends, the appropriate channel lineup was found by comparing the headend id and community name from the TMS data to channel lineups for that community on the Comcast website. The Comcast website was reviewed, and it was determined which of the channels listed for the duplicated channel positions appeared to be listed in that position according to the lineup for that community.

37. All of these steps resulted in the final dataset on which I performed my analysis of Comcast's neighborhoods of news, business news, and public affairs channels.

38. I next analyzed whether neighborhoods of news, business news, and public affairs channels, as defined by *Neighborhood Order* as "channels whose programming during the hours from 6:00 a.m. to 4:00 p.m. is focused on reporting and analysis relating to public affairs or local affairs of general interest or relating to business. ... [B]usiness 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 neighborhood analysis." For convenience, I will refer to neighborhoods of news, business news, and public affairs channels as "news neighborhoods" in the balance of this declaration.

39. In the *Merger Order* approving the Comcast-NBC Universal Merger, the Commission defined a neighborhood as a “significant number or percentage of news and/or business news channels that are substantially adjacent to one another in a system’s channel lineup...”¹¹ For purposes of the news neighborhooding condition, the Commission explained in the *Neighborhood Order* that a neighborhood is “a grouping containing four news or business news channels within a cluster of five adjacent channel positions.”¹² Thus, four contiguous news channels and four news channels within five relative channel positions constitute a news neighborhood.

40. I first determined the set of news channels which would be counted in the definition of news neighborhoods. This consisted of all SD national news, public affairs, and business news channels as well as all local, state, and regional news and public affairs channels. I will refer to this set of channels as “news channels” for the balance of this declaration.

41. Second, I determined how calculations of neighborhoods should handle blank channels between channel positions reported in the TMS data. I considered two possibilities. First, I considered the actual channel position as reported by TMS in the definition of news neighborhoods. This treated a blank channel as a gap between adjacent channels. For example, news channels in positions 48, 50, 51, and 52, with channel 49 blank would not have qualified as a neighborhood under a neighborhood definition that required four news channels to be contiguous. Alternatively, I considered *relative* channel positions in the definition of a news neighborhood. In this case, I simply listed all the channels on a headend in order of their reported channel position and assigned to them a new index, which I called their relative channel position, when calculating a neighborhood. For example, the same four channels occupied relative channel positions 46, 47, 48,

¹¹ *Merger Order*, ¶ 122.

¹² *Neighborhood Order*, ¶ 5.

and 49. Under this alternative definition of channel position, they did qualify as a neighborhood under a neighborhood definition that required four news channels to be contiguous.

42. I use the definition of a neighborhood based on the second method, relative channel position, in the balance of this declaration. I did so to reflect what I felt households are likely to believe to be a neighborhood based on their television usage. Many households likely decide what to watch by flipping through television channels. If so, then what matters to their perception of a neighborhood are the relative positions of channels, not their absolute channel numbers.

43. Having defined the news channels which would count in the calculation of news neighborhoods and the metric – relative channel position – that would define adjacency of channels in a channel lineup, I next defined news neighborhoods.

44. As noted above, the *Neighborhood Order* defined a neighborhood as “a grouping containing four news or business news channels within a cluster of five adjacent channel positions.” In essence, a news neighborhood, therefore, is any group of channels that, based on their relative channel position on a Comcast channel lineup, include (1) at least four contiguous news channels or (2) at least four news channels in a group of five channel positions.

45. In what follows, I briefly describe how I implemented these definitions. Locating news neighborhoods was easiest for groups of news channels that were contiguous in Comcast’s channel lineups. To do so, I defined a “pod” of channels as a collection of like channels (news or non-news) that were adjacent in a Comcast channel lineup. The type of the first pod in any channel lineup depends on whether the first channel in that lineup is a news channel or a non-news channel. Most lineups begin with a non-news channel and so the first pod was typically a non-news pod. For expositional convenience, suppose that the first pod is indeed a non-news pod. I then examined the next channel in the channel lineup. If it, too, was a non-news channel, then it was added to the first

pod, making a pod of two non-news channels. I then examined the next channel in the channel lineup.

46. This process continued until I came across a channel of a type different than that of the current pod. Suppose for convenience this happened in the eighth channel position. Since the first pod was a non-news pod, the eighth channel must have been a news channel. This defines the end of the first, non-news, pod (which was a pod of seven channels) and the beginning of the first news pod. As always, I continued by examining the next channel in the channel lineup. If it was a news channel, it was added to the second pod, making it a news pod of two channels. If it was a non-news channel, the second pod was a news pod with only one channel, and the non-news channel marked the beginning of the third pod (or the second non-news pod). This process continued, adding channels to the previous pod if the channel was the same type as the previous channel in the channel lineup or defining a new pod if the channel was a different type as the previous channel in the channel lineup, until the end of the channel lineup.

47. By construction, pods must alternate between news pods and non-news pods. I defined a news neighborhood (based on contiguous channel groups) to be a news pod of at least four channels.

48. I next extended the definition of a news neighborhood to allow for a single non-news channel within a group of at least four news channels. Based on the definition of neighborhoods using pods as defined above, a group of news channels on positions 32, 33, 35, and 36 with a non-news channel on position 34 would not qualify as a news neighborhood. The previous definition of pods would define that group of channels as a news pod of two channels (channels 32 and 33) followed by a non-news pod of one channel (channel 34) followed by a news pod of two channels (channels 35 and 36).

49. To allow for news neighborhoods with a single non-news channel among news channels, I created an additional (broader) definition of news pods and re-calculated neighborhoods. I began by identifying all non-news pods of one channel that were not at the beginning or end of a channel lineup; by construction, each of these one-channel non-news pods was located between two news pods. I then examined whether the sum of news channels in the two pods on either side of the (singleton) non-news pod contained at least 4 news channels. If so, I called the combination of the two news pods surrounding the singleton non-news pod a “news pod allowing one non-news channel” and also defined this as a news neighborhood.

50. In the example above, this meant that channels 32-36 would now qualify as a news neighborhood even though one of those channels (channel 34) was a non-news channel.

51. Using this definition of news neighborhood, I analyzed how many Comcast headends in the top-35 Nielsen DMAs carry BTV, but not in a news neighborhood, and contain two SD news neighborhoods.

52. I next used the publicly-available Nielsen ratings information from “TV By the Numbers” to obtain a random sample of 50 days of daily (total day, persons above 2 years old) viewership ratings from the past 12 months for CNBC, CNN, Fox Business News, Fox News Channel, Headline News, and MSNBC. The sample size of 50 provides estimates of each rated channel’s viewership with margins of error between 2 and 10 percent of their average viewership numbers.

53. I then followed the steps and adopted the assumptions discussed in paragraphs 14-20 of this Declaration to obtain create the final dataset of news channels that I used in performing my analysis of Comcast’s neighborhoods of news and public affairs channels.

54. My analysis, including the assumption that the news channels for which ratings were unavailable from a publicly-available source had viewership equal to Fox Business News divided by 4, reflects the following:

In the top 35-DMAs, when there are two news neighborhoods (one in positions 1-99 and one above 100), I estimate that the average share of total news viewership that belongs to the first news neighborhood (1-99) is 82.9 percent of the headend's news viewership. The average share of viewership that belongs to the second news neighborhood (100+) is 3.1 percent of the headend's news viewership. In some headends, the percentage of viewership belonging to the second news neighborhood (100+) could be as low as 1.5 percent.

Ali Yurukoglu
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Dated: September 28, 2012

Appendix A

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AFFILIATIONS

Assistant Professor of Economics, Stanford University Graduate School of Business, July 2009-
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EDUCATION

Ph.D. in Economics, NYU Stern, 2009

Thesis Title: *Price Discrimination and Vertical Relationships in Multichannel Television.*

Committee: Ariel Pakes, Luis Cabral, John Asker, Allan Collard-Wexler

Completed coursework for M.S. in Mathematics.

B.A. in Economics and Math, Northwestern University, 2004 (Honors in Economics).

SCHOLARSHIPS, HONORS AND AWARDS

2011 Fletcher-Jones Faculty Scholar

2009 Review of Economic Studies Tour

2009 Harold W. MacDowell Award

2008-2009 Jules I. Bogen Fellowship

2006-2007 NYU Stern Entertainment, Media, and Technology Department Doctoral Dissertation Grant

SEMINARS AND CONFERENCE PRESENTATIONS

2012 Duke Empirical Micro Jamboree

2011 Harvard, Hebrew University Jerusalem, Ben Gurion University

2010 IOS at AEA Meetings, UCSC, IFN Stockholm, Cisco Systems, Business Decisions

Conference Vancouver, UC Berkeley

2009 Stanford GSB, Yale SoM Marketing, Princeton, Columbia GSB, UCLA, Duke, MIT Sloan,

Chicago GSB Marketing, Northwestern, Drexel, LSE, Brown Econometrics of Demand

Conference, Munich CES iFo, ULB, Oxford, Yale, UMN, FRB Minneapolis (One week visit),

University of Chicago, UW Madison, UC Davis, MIT, BU

2008 NBER Summer Institute – IO, IIOC

RESEARCH PAPERS

The Welfare Effects of Bundling in Multichannel Television (with Gregory S. Crawford)

American Economic Review, Vol. 102, No. 2, April 2012

Combines earlier papers:

Bundling and Vertical Relationships in Multichannel Television (Job Market Paper)

The Welfare Effects of Bundling in Multichannel Television (with Gregory S. Crawford)

Medicare Reimbursements and Shortages of Sterile Injectable Pharmaceuticals

WORK IN PROGRESS

Political Activity by Regulated Electric Utilities (with Claire Lim)

Vertical Integration in Multichannel Television (with Greg Crawford, Robin Lee, and Michael Whinston)

CERTIFICATE OF SERVICE

I, Carly T. Didden, certify on this 28th day of September, 2012, a copy of the foregoing "Bloomberg L.P. Opposition to the Comcast Cable Communications, LLC Application for Review" was served via first-class U.S. Mail, postage pre-paid, to the following:

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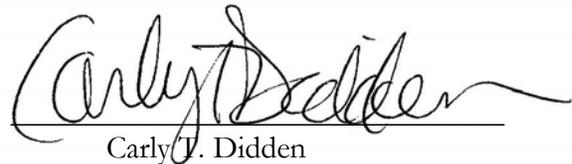
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