

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

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

**COMCAST CABLE COMMUNICATIONS, LLC’S REPLY TO BLOOMBERG’S
OPPOSITION TO APPLICATION FOR REVIEW RELATING TO SD/HD ISSUES**

Comcast Cable Communications, LLC (“Comcast”), pursuant to 47 C.F.R. § 1.115(d), hereby files this Reply to Bloomberg L.P.’s (“Bloomberg”) Opposition¹ to Comcast’s Application for Review relating to SD/HD issues.² As explained below, the Commission should grant Comcast’s Application for Review, reverse in part the *Clarification Order*³ with respect to its determination that Comcast cannot satisfy the Condition by placing BTV HD in an HD neighborhood, and deny Bloomberg’s parallel Application for Review.⁴

¹ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Bloomberg Opposition to Application for Review of Comcast Cable Communications (filed Sept. 28, 2012) (“Opposition”).

² *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Application for Review of Comcast Cable Communications, LLC (filed Sept. 13, 2012) (“Comcast Application for Review”).

³ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Memorandum Opinion and Order, DA 12-1338 (MB rel. Aug. 14, 2012) (the “*Clarification Order*”).

⁴ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Application for Review of Bloomberg L.P. (filed Sept. 13, 2012) (“Bloomberg Application for Review”).

A. The *Clarification Order* Is Inconsistent with the *Neighborhood Order* and the Intent and Purpose of the Condition

Nothing in Bloomberg’s Opposition addresses Comcast’s basic argument that the *Clarification Order* is inconsistent with the *Neighborhood Order* and the Condition.⁵ In the *Neighborhood Order*, the Bureau correctly ruled that Comcast could comply with the Condition by placing BTV in a *single* news neighborhood.⁶ The upshot of the *Clarification Order*, however, is that an independent news network could attempt to use the Condition to be “neighborhooded” twice on every single lineup that contains both an SD and an HD news neighborhood.⁷ As demonstrated in Comcast’s Application for Review, this result finds no support in the record or the plain language of the Condition, which – as Bloomberg concedes⁸ – makes no distinction between SD and HD. It would cause further disruption to customers and third-party programming networks and further unmoor the Condition from the narrowly-tailored remedy the Commission adopted. And this expansion and distortion of the Condition would also improperly infringe upon Comcast’s First Amendment right to exercise editorial discretion over how it presents programming to viewers.

Bloomberg does not seriously respond to Comcast’s arguments. Instead, Bloomberg cites to inapposite program access precedents distinguishing SD and HD versions of networks

⁵ See Comcast Application for Review at 7-14.

⁶ See *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Memorandum Opinion and Order, DA 12-694 (MB rel. May 2, 2012) (the “*Neighborhood Order*”) ¶¶ 20-21.

⁷ See *Clarification Order* ¶ 9; see also Comcast Application for Review at 9-10. Bloomberg accuses Comcast of raising 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.” Opposition at 9. Tellingly, however, Bloomberg does not explain – because it cannot – why the *Clarification Order* does not leave open this possibility.

⁸ See Opposition at 9.

and further contends that its SD feed is different from its HD feed and so should be treated differently under the Condition.⁹ But neither the Condition nor the *Comcast-NBCUniversal Order* makes any distinction between SD and HD.¹⁰ Perhaps more important, the Condition was designed to ensure that consumers have ready access to independent news *programming*, not to multiple feeds of the same programming.¹¹ While Bloomberg states that the HD feed of BTV includes some additional graphics and crawls, it does not suggest that there is any programming included in the SD feed that is not also included in the HD feed.¹² Accordingly, the Condition should be satisfied when one feed of BTV is placed in one neighborhood.¹³

Next, Bloomberg cites – once again – channel relocation figures in a futile attempt to demonstrate that Comcast faces no real burden from Bloomberg’s request.¹⁴ Comcast has conclusively discredited these arguments and demonstrated that the channel changes arising from headend consolidations or upgrades in plant technology (relied upon by Bloomberg) are a far cry from the relocations that Bloomberg seeks to impose in this proceeding – all of which are in

⁹ See Opposition at 2-6.

¹⁰ *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, 4287-4288 ¶ 122, 4358, Appendix A § III.2 (2011) (“*Comcast-NBCUniversal Order*”).

¹¹ See, e.g., *id.*, 26 FCC Rcd at 4287-4288 ¶ 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 supplied).

¹² See Opposition at 5-6.

¹³ See *Neighborhood Order* ¶ 21; see also Comcast Application for Review at 9. Bloomberg also insists that the *Clarification Order* is correctly decided because most of the evidence in the record in the current proceeding focused on SD channels. See Opposition at 10-13. This, too, is irrelevant. The Commission does not need new evidence to determine whether the Condition permits Comcast to comply with its terms by placing an independent news network in an HD neighborhood rather than an SD neighborhood.

¹⁴ See Opposition at 17-20.

channel positions below 100, where the burden is greatest.¹⁵ Moreover, it is disingenuous for Bloomberg to continue to cite Comcast's motion for partial extension of time as evidence that compliance with the *Neighborhood Order* would be minimally disruptive. Comcast's compliance plans were predicated, in part, on launching or relocating BTV's HD feed into an HD neighborhood, which the *Clarification Order* would now prohibit and Bloomberg strenuously opposes.¹⁶

Providing Comcast with discretion over which news neighborhood to place an independent news network is not "illogical,"¹⁷ as Bloomberg claims. As the Bureau itself acknowledged, the Condition was narrowly tailored in order to enable Comcast "to limit major channel realignments and the cost and customer disruption associated with those realignments."¹⁸ It also minimizes the interference with Comcast's First Amendment right to develop its channel lineups and the means by which it presents programming to viewers.

With respect to the First Amendment, Bloomberg insists that the *Neighborhood Order* and the *Clarification Order* "pass any reasonable constitutional test" and also accuses Comcast of challenging the Commission's authority to enforce the Condition.¹⁹ But Comcast has never challenged the Commission's authority to enforce the Condition,²⁰ nor is Comcast contending

¹⁵ See *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Surreply of Comcast Cable Communications, LLC (filed Sept. 27, 2011) ("Surreply") ¶¶ 33-39.

¹⁶ See *Clarification Order* ¶ 9; *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Bloomberg Opposition to Application for Review of Comcast Cable Communications, LLC (filed June 18, 2012), at 15 & n.68. See also *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 Motion") at 10-11.

¹⁷ Opposition at 20.

¹⁸ *Neighborhood Order* ¶ 21; see also Comcast Application for Review at 12.

¹⁹ Opposition at 15-17, 22-23.

²⁰ See, e.g., *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-

that the Condition *on its face* infringes Comcast’s First Amendment rights. The issue, rather, is whether the Bureau’s *implementation* of the Condition through the *Neighborhood Order* and the *Clarification Order* are also constitutional – and the burden the *Clarification Order* imposes on Comcast’s discretion to organize its lineups raises serious questions on this point.

B. The Commission Should Not Wait to Rule on the SD/HD Issue

Nothing in the Opposition explains why the Commission should not take this opportunity to provide a complete ruling on the scope and reach of the Condition, including the SD/HD issue. To enable the Commission to so rule, the Bureau stayed the effectiveness of the *Neighborhood Order* with respect to headends that include multiple neighborhoods, including those in HD, to “help avoid and reduce disruption to consumers that could arise if Comcast were required to adjust channel lineups more than once.”²¹ 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. The Commission should not wait for Bloomberg to file another complaint seeking HD relief and launch a second, largely duplicative proceeding. Notwithstanding Bloomberg’s arguments to the contrary, the Commission can provide this guidance on the strength of the record before it.²²

CONCLUSION

For the foregoing reasons and the reasons set forth in Comcast’s Application for Review, the Commission should grant Comcast’s Application for Review and deny Bloomberg’s Complaint.

104, Comcast’s Opposition to Application for Review (filed June 18, 2012) at 11 n.39.

²¹ *Clarification Order* ¶ 10.

²² Comcast also stands ready to provide any supplemental information the Commission may need to decide the HD issues now.

Respectfully submitted,

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October 9, 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 “Comcast Cable Communications, LLC’s Reply to Bloomberg’s Opposition to Application for Review Relating to SD/HD Issues.” To the best of my personal knowledge, information, and belief, the statements made in this Reply, 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 Reply is not interposed for any improper purpose.

October 9, 2012

/s/ Arthur J. Burke
Arthur J. Burke

CERTIFICATE OF SERVICE

I, Arthur J. Burke, hereby certify that, on October 9, 2012, copies of the attached “Comcast Cable Communications, LLC’s Reply to Bloomberg’s Opposition to Application for Review Relating to SD/HD Issues” were filed through the Commission’s Electronic Comment Filing System and served by hand delivery to the following:

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In addition, a copy of the attached “Comcast Cable Communications, LLC’s Reply to Bloomberg’s Opposition to Application for Review Relating to SD/HD Issues” was served by email to:

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