

**ORIGINAL**

2550 M Street, NW  
Washington, DC 20037-1350  
202-457-6000

Facsimile 202-457-6315  
www.pattonboggs.com

October 9, 2012

Stephen Díaz Gavin  
202-457-6340  
SGavin@PattonBoggs.com

**VIA HAND DELIVERY**

**FILED/ACCEPTED**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**OCT - 9 2012**  
Federal Communications Commission  
Office of the Secretary

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

Dear Ms. Dortch:

On behalf of Bloomberg L.P., enclosed please find an original and four copies of the public version of Bloomberg L.P.'s Reply to the Comcast Cable Communications, LLC Opposition to Bloomberg's Application for Review. A confidential version of Bloomberg's reply and a Request for Confidential Treatment are being filed contemporaneously herewith.

Should you have any questions, please feel free to contact me at (202) 457-7503.

Respectfully submitted,



Stephen Díaz Gavin

*Counsel for Bloomberg L.P.*

Enclosures

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

In the Matter of )  
)  
**BLOOMBERG L.P.** )  
Complainant )  
)  
v. )  
)  
**COMCAST CABLE COMMUNICATIONS, LLC** )  
Defendant )

MB Docket No. 11-104

FILED/ACCEPTED

NOV - 9 2012

Federal Communications Commission  
Office of the Secretary

To: The Commission

**BLOOMBERG L.P. REPLY TO OPPOSITION TO APPLICATION FOR REVIEW**

Bloomberg L.P. (“Bloomberg”) hereby replies to Comcast Cable Communications, LLC’s (“Comcast”) opposition to Bloomberg’s Application for Review of the Order released by the Media Bureau on August 14, 2012, in the above-captioned docket.<sup>1</sup> Bloomberg requested review of one narrow aspect of the *Clarification Order*--the Bureau’s stay on its own motion of neighborhooding on the remaining Comcast channel lineups that only have one standard definition (“SD”) news neighborhood below channel 100 (“Bucket 2B”). The Commission should require Comcast to implement the relief granted in the *Neighborhood Order* and the *Clarification Order*, particularly in light of fact that 25% of the seven year time period of the neighborhooding condition has expired.<sup>2</sup>

**I. Comcast Mischaracterizes Bloomberg’s Support For A Stay**

Comcast falsely states that Bloomberg supports a stay in this proceeding if either party

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

<sup>2</sup> *Bloomberg L.P. v. Comcast Cable Communications, LLC, Memorandum Opinion and Order*, 27 FCC Rcd 4891, 4903 ¶¶ 26 & 27 (MB 2012) (“*Neighborhood Order*”); *Clarification Order* at 9489, ¶ 3.

prevailed on the HD issue.<sup>3</sup> Bloomberg proposed a very limited stay but specified that it did not agree to a stay of Bucket 2B: “If the Bureau rules in favor of Bloomberg on the HD issue, then Comcast would be required to move forward with neighborhooding on the [ ] channel lineups in Bucket 2B and Bloomberg would agree to a stay for the remaining channel lineups.”<sup>4</sup> The *Clarification Order* ruled in favor of Bloomberg on the HD issue but arbitrarily granted a stay despite clarifying that the Complaint dealt only with the SD feed.<sup>5</sup> Therefore, there is no basis to claim that Bloomberg supports a stay for Bucket 2B channel lineups.

## II. The Stay Is Inconsistent With The Condition And The *Clarification Order*

The Bureau’s analysis in the *Clarification Order* is clear: Bloomberg requested SD relief for BTV-SD and it should be neighborhooded in SD neighborhoods. The *Clarification Order* definitively stated that the Complaint and the *Neighborhood Order* only dealt with SD news neighborhoods.<sup>6</sup> The channel lineups in Bucket 2B only have one SD news neighborhood. The Commission should immediately reverse the stay and direct Comcast to neighborhood BTV on 2B channel lineups. Comcast’s erroneous arguments that the stay is necessary are inconsistent with the scope of this proceeding and Commission precedent.<sup>7</sup> Bloomberg only requested SD relief in its Complaint.<sup>8</sup> Indeed, Comcast argued in this proceeding that Bloomberg was not entitled to HD relief. As such,

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<sup>3</sup> Comcast Opposition to Bloomberg HD Application for Review at 5 (filed Sept. 28, 2012).

<sup>4</sup> 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 19 (filed June 21, 2012) (“Bloomberg June 21 HD Filing”) (emphasis supplied).

<sup>5</sup> *Clarification Order* at 9491, ¶ 9. Comcast has been ordered to neighborhood other channel lineups with one SD neighborhood below channel 100 without an HD neighborhood. No other independent news channel has requested neighborhooding.

<sup>6</sup> *Clarification Order* at 9491, ¶ 9.

<sup>7</sup> See Comcast Opposition to Bloomberg HD Application for Review at 5-6.

<sup>8</sup> See Complaint, *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104, at 10, ¶ 23 (filed June 13, 2011) (“Complaint”); See *Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, 27 FCC Rcd 8508, 8543 (2012).

the record is limited to neighborhooding in SD.<sup>9</sup> Commission precedent states clearly that SD and HD programming feeds are different channels for carriage purposes<sup>10</sup> and that relief should be limited to that sought by Complainant.<sup>11</sup> Therefore, no novel or significant legal issues need to be resolved before BTV is neighborhooded on the channel lineups with one SD news neighborhood.

Comcast erroneously argues that the Condition “only requires that Comcast carry BTV in ‘a neighborhood.’”<sup>12</sup> Comcast incorrectly quotes only from the antecedent of the condition, which reads that if Comcast carries news channels in “a neighborhood” then Comcast must carry independent news channels “in that neighborhood.” The Bureau found “a neighborhood” of SD channels and the Condition requires Comcast to neighborhood BTV-SD “in that neighborhood.”<sup>13</sup>

### III. The Stay Is Not In The Public Interest For The Bucket 2B Channel Lineups

The stay harms Bloomberg because it is not receiving the full benefit of neighborhooding. Comcast customers are similarly harmed because they are not receiving the benefits of neighborhooding. Despite the fact that BTV has been neighborhooded in 42% of Comcast’s channel lineups,<sup>14</sup> only [REDACTED] of Comcast’s subscribers are currently receiving the benefit of

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<sup>9</sup> Such a result is also consistent with the language of the Neighborhooding Condition, that “if Comcast ... carries news and/or business news channels in a neighborhood ....Comcast must carry all independent news and business news channels in that neighborhood.” *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, 4358, App. A, III (2011) (“*Merger Order*”), App. A, III.

<sup>10</sup> See *Verizon Telephone Cos. v. Madison Square Garden, L.P.*, Order, 26 FCC Rcd 13145, 13148, ¶ 4 (2011) (“*Verizon*”); *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*”).

<sup>11</sup> *Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, 27 FCC Rcd 8508, 8543 (2012).

<sup>12</sup> Comcast Opposition to Bloomberg HD Application for Review at 7.

<sup>13</sup> The word “that” is defined as “the person, thing, or idea indicated, mentioned, or understood from the situation.” <http://www.merriam-webster.com/dictionary/that>.

<sup>14</sup> Comcast May 22 Letter at Exh. 1 (identifying channel lineups where it plans to neighborhood BTV); Bloomberg HD Application for Review at 5, n.15.

neighborhooding BTV.<sup>15</sup> In contrast, the burden of neighborhooding on Comcast is minimal, because it routinely makes thousands of channel changes a year.<sup>16</sup> Contrary to Comcast's allegations, Bloomberg's appeal of the *Neighborhood Order* does not provide a basis to stay neighborhooding implementation. Bloomberg's Application for Review argued, among other issues, that BTV should be neighborhooded in all news neighborhoods. If the Commission rules in Bloomberg's favor, Comcast will be required to neighborhood BTV on all SD news neighborhoods.<sup>17</sup>

#### **IV. Consistent With Commission Precedent, BTV's SD and HD Programming Networks Are Different**

Comcast mistakenly argues that the stay is necessary because "neither the Condition nor the [*Merger Order*] expressly addressed questions regarding the appropriate treatment of SD and HD feeds under the Condition."<sup>18</sup> The Commission did not address this issue in the *Merger Order* because Commission precedent regarding the distinction between HD and SD feeds is clear. The *2010 Program Access Order*, the *AT&T*, and *Verizon* cases that SD and HD channels are different.<sup>19</sup> Indeed, Comcast has conceded that the Commission has determined that SD and HD channels are distinct.<sup>20</sup> Comcast cannot now treat SD and HD channels as the same for compliance purposes.

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<sup>15</sup> See Declaration of James Cofer, Exhibit A hereto.

<sup>16</sup> 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 52, Ex. A ¶ 106 (filed Aug. 30, 2011). Significantly, no other channel has apparently requested such relief.

<sup>17</sup> The stay is overly broad because it includes channel lineups with only one SD news neighborhood, (and one HD news neighborhood), which do not implicate the issues Bloomberg raised on appeal involving multiple SD news neighborhoods. Therefore, the public interest would be served by allowing neighborhooding on the remaining channel lineups with one SD news neighborhood.

<sup>18</sup> Comcast Opposition to Bloomberg HD Application for Review at 7.

<sup>19</sup> Bloomberg Initial Application for Review, *Bloomberg* at 5, n. 15 (filed June 1, 2012); Bloomberg L.P.'s Response to the Media Bureau's Request for Additional Information Regarding High Definition News Neighborhoods at 5 (filed June 19, 2012) ("Bloomberg June 19 HD Filing").

<sup>20</sup> 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"); see also *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, First*

Bloomberg provided evidence of the differences between BTV's HD and SD feeds to demonstrate that the two channels are different.<sup>21</sup> Bloomberg also explained how the Commission's SD/HD precedent applies to this proceeding.<sup>22</sup> Bloomberg did not "introduce a new theory" of its Complaint but rather stated that because its Complaint only requested neighborhooding in SD news neighborhoods, the relief in this proceeding is correctly limited to SD news neighborhoods.<sup>23</sup>

**WHEREFORE**, in light of the foregoing, Bloomberg respectfully requests that the Commission affirm the *Clarification Order* and direct Comcast to neighborhood BTV in SD neighborhoods on Bucket 2B channel lineups.

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*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); *Verizon* at 13148, ¶ 4; *AT&T* at 13209, ¶ 4.

<sup>21</sup> Bloomberg June 21 HD Filing at Ex. A.

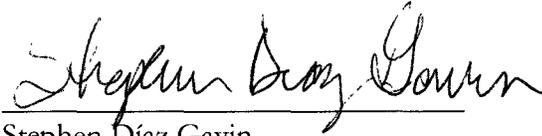
<sup>22</sup> See Bloomberg, Application for Review, *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104, at 12 (filed Sept. 13, 2012); Bloomberg L.P. Opposition to the Comcast Cable Communications, LLC Application for Review, *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Dkt. No. 11-104, at 2-5 (filed Sept. 28, 2012).

<sup>23</sup> Moreover, the Bureau made clear that Comcast could not undercut the neighborhood condition by creating fragmented, separated neighborhoods. "[W]e do not believe that the Commission intended to allow Comcast to evade the condition by creating multiple news neighborhoods." *Neighborhood Order* at 4900, ¶ 20. Comcast's proposal to neighborhood BTV HD instead of placing the BTV-SD feed in SD news neighborhoods runs contrary to the Bureau's directive.

Respectfully submitted,

**BLOOMBERG L.P.**

By:

A handwritten signature in black ink, reading "Stephen Díaz Gavin", written over a horizontal line.

Stephen Díaz Gavin

Kevin J. Martin

Janet Fitzpatrick Moran

Monica S. Desai

PATTON BOGGS LLP

2550 M Street NW

Washington, DC 20037

(202) 457-6000

*Its Counsel*

Dated: October 9, 2012

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 JAMES COFER**

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

1. My name is James Cofer. I am currently the Head of Distribution of Bloomberg Television, Americas.
2. In my current position, my team and I sell and market Bloomberg Television (“BTV”) to multichannel video programming distributors (“MVPDs”) in the United States, Canada and Latin America. My job responsibilities also include overseeing the implementation of distribution agreements between Bloomberg and MVPDs.
3. As a result of the distribution agreement between Bloomberg and Comcast, dated September 22, 2006, I receive a monthly statement from Comcast (“Statement”). Each Statement lists the following: (a) the total number of Comcast systems that carry BTV and (b) the total number of BTV subscribers per system for that month.
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”),<sup>1</sup> which conditions 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.”<sup>2</sup>

5. In May 2012, the FCC granted a complaint filed by Bloomberg to implement the news neighborhood condition.<sup>3</sup> 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 relief is appropriate on other headends.”<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> *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*”).

<sup>2</sup> *Merger Order*, ¶ 122.

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

<sup>4</sup> *Neighborhood Order*, ¶ 2.

<sup>5</sup> *Neighborhood Order*, ¶ 6.

6. 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.”<sup>6</sup> 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 (“Exhibit 1 Data”).
7. On June 14, 2012, Bloomberg and Comcast met with the FCC’s Media Bureau (“Bureau”) staff regarding implementation of the *Neighborhood Order*. Using the Exhibit 1 Data, the parties agreed to categorize channel lineups into “buckets” and agreed on certain aspects of implementation. First, the Bureau directed Comcast to neighborhood BTV on the channel lineups in markets with only one SD news neighborhood that have vacant channels adjacent to the news neighborhood (“Bucket 1”) by July 1, 2012, and in markets with only one SD news neighborhood without a vacancy near it (“Bucket 2A”) by August 15, 2012.<sup>7</sup> The parties agreed and the Bureau stayed markets that contained two SD neighborhoods (“Bucket 3”). The

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<sup>6</sup> 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”).

<sup>7</sup> *Clarification Order*, ¶ 8.

remaining channel lineups were defined as those lineups with one SD neighborhood and one HD neighborhood (“Bucket 2B”).<sup>8</sup>

8. The FCC subsequently 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.”<sup>9</sup> 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.”<sup>10</sup>
9. I was recently asked by Bloomberg to calculate the percentage of Comcast subscribers that are now able to view BTV in a news neighborhood.
10. I first reviewed the Statement dated April 2012 and the Bloomberg June 19 Filing to determine which Comcast channel lineups that include BTV in the top-35 DMAs are subject to neighborhooding, pursuant to the *Neighborhood Order*. My team and I then called the cable

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<sup>8</sup> Bloomberg L.P.’s Response 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 5 (filed June 19, 2012) (“Bloomberg June 19 Filing”).

<sup>9</sup> *Bloomberg L.P. v. Comcast Cable Communications, L.P.*, Memorandum Opinion and Order, DA 12-1338, ¶ 3 (MB rel. Aug 14, 2012 (“*Clarification Order*”).

<sup>10</sup> *Clarification Order*, ¶ 3.

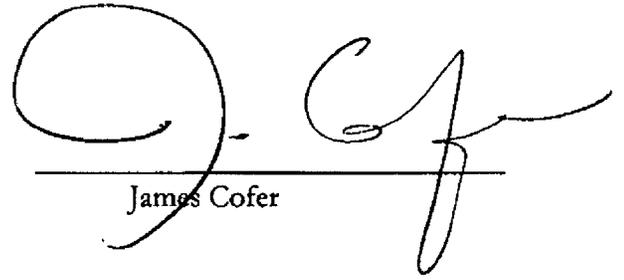
systems that were subject to neighborhooding and/or used Comcast's xfinity channel lineup tool to determine where neighborhooding had been completed.<sup>11</sup>

11. I calculated the sum of the subscribers for the channel lineups where Comcast states that BTV is to be neighborhooded ("Total Neighborhooded Subscribers"), and the sum of the subscribers for the channel lineups where Comcast represented to the Commission that neighborhooding was completed ("Completed Neighborhooded Subscribers"). I then divided the number of Completed Neighborhooded Subscribers and the number of Total Neighborhooded Subscribers to determine the percentage of Comcast subscribers that are now able to view BTV in a news neighborhood as a result of the *Neighborhood Order*.
12. My analysis determined that only [REDACTED] of Comcast's subscribers that are subject to the *Neighborhood Order* are able to now view BTV in a news neighborhood.

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<sup>11</sup> <http://xfinitytv.comcast.net/tv-listings>.

Dated: October 9, 2012



James Cofer

**CERTIFICATE OF SERVICE**

I, Carly T. Didden, certify on this 9th day of October, 2012, a copy of the foregoing “Bloomberg L.P. Reply to Opposition to Application for Review” was served via first-class U.S. Mail, postage pre-paid, to the following:

Neil Smit  
President  
Comcast Cable Communications  
One Comcast Center  
Philadelphia, PA 19103

Arthur Block  
Senior Vice President  
General Counsel and Secretary  
Comcast Corporation  
One Comcast Center  
Philadelphia, PA 19103

Michael P. Carroll  
Arthur J. Burke  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017

David H. Solomon  
J. Wade Lindsay  
Wilkinson Barker Knauer LLP  
2300 N Street, NW, Suite 700  
Washington, DC 20037

Sarah L. Gitchell  
Thomas R. Nathan  
Comcast Cable Communications, LLC  
One Comcast Center  
Philadelphia, PA 19103

Lynn R. Charytan  
Justin Smith  
Frank La Fontaine  
Comcast Corporation  
300 New Jersey Avenue NW, Suite 700  
Washington, DC 20001



Carly T. Didden