

June 25, 2013

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VIA ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

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

Dear Ms. Dortch:

Attached please find a letter delivered to Acting Chairwoman Clyburn, Commissioner Rosenworcel, Commissioner Pai, Commission staff, and served on the parties in the above-referenced proceeding today.

Sincerely,



Janet Fitzpatrick Moran

June 25, 2013

Stephen Diaz Gavin
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The Honorable Mignon Clyburn
Acting Chairwoman
Federal Communications
Commission
445 12th St., S.W.
Washington, DC 20554

The Honorable Jessica Rosenworcel
Commissioner
Federal Communications
Commission
445 12th St., S.W.
Washington, DC 20554

The Honorable Ajit Pai
Commissioner
Federal Communications
Commission
445 12th St., S.W.
Washington, DC 20554

Re: Bloomberg, L.P. v. Comcast Cable Communications LLC, MB Docket No. 11-104¹

Dear Chairwoman Clyburn, Commissioner Rosenworcel and Commissioner Pai:

Nearly 29 months ago, the Commission approved, with conditions agreed to by Comcast Corp. (“Comcast”), the assignment and transfer of control of certain licenses from the General Electric Company to Comcast.² As noted, Comcast expressly accepted the Commission’s conditional approval of the Merger.³ Specifically as to the matter referenced above, the Commission required that “if Comcast now or in the future carries news and/or business news channels in a

¹ In a restricted proceeding, a written presentation served on all parties and filed in the record is a permissible non-*ex parte* presentation. See 47 C.F.R. §§ 1.1208 (“A party making a written ... presentation in a restricted proceeding, on a non-*ex parte* basis, must file a copy of the presentation ... in the record of the proceeding...”), 1.1202(a) (“*Presentation*. A communication directed to the merits or outcome of a proceeding...”), and 1.1202(b)(1) (“*Ex parte presentation*. Any presentation which: (1) if written, is not served on the parties to the proceeding...”).

² *Applications of Comcast Corp., General Electric Co. 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*”).

³ Letter from Kathryn A. Zachem (Comcast), Ronald A. Stern (General Electric Co.), and Richard Cotton (NBC Universal, Inc.) to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Dkt. No. 10-56 (filed Jan. 21, 2011) (“Applicants accept as binding the conditions and enforceable commitments included in the MO&O and expressly waive any right they may have to challenge the Commission’s legal authority to adopt and enforce such conditions and commitments (reserving, of course, their right to challenge the interpretation or application of those conditions and commitments in particular circumstances).”).

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neighborhood . . . Comcast must carry all independent news and business news channels in that neighborhood.”⁴

Bloomberg L.P. (“Bloomberg”) respectfully requests that the Commission expeditiously complete its review of the record in the above-referenced proceeding and issue an order directing Comcast to neighborhood Bloomberg Television (“BTV”) in every standard definition (“SD”) news neighborhood in the top-35 Nielsen Designated Market Areas (“DMAs”) for all headends where BTV is carried.

As has been well detailed,⁵ after Comcast refused BTV’s request to be neighborhooded in then-existing news neighborhoods, Bloomberg filed a complaint.⁶ The Complaint requested that for all headends where BTV is carried, the Commission should order Comcast to move BTV to every news neighborhood on any headend located in the top-35 DMAs,⁷ consistent with the *Merger Order*.

After a long and exhaustive pleading cycle, and nearly 11 months after Bloomberg filed its Complaint, the Bureau issued the *Neighborhood Order*,⁸ in which it found that “Bloomberg has demonstrated that on at least some of its systems Comcast neighborhoods news channels on certain headends and does not carry [BTV] in a neighborhood on those headends, as required by the news neighborhooding condition of the [*Merger Order*]”⁹ and directed that within sixty days of the order Comcast was to begin to carry BTV on systems with at least one existing news neighborhood.¹⁰

In the *Clarification Order*,¹¹ the Bureau interpreted the *Neighborhood Order* as properly having decided “only the issue of whether BTV’s SD programming [] is entitled to carriage in an SD ‘news neighborhood’ on Comcast’s channel lineup.”¹² In spite of this decision, the Bureau decided to

⁴ *Merger Order* at 4288, ¶ 122; see also *id.* at App. A, § III.2 (hereinafter, the “news neighborhood condition” or “Condition”).

⁵ See Application for Review of Bloomberg, Bloomberg L.P. v. Comcast Cable Communications, LLC, MB Dkt. No. 11-104 (filed June 1, 2012).

⁶ Complaint, Bloomberg L.P. v. Comcast Cable Communications, LLC, MB Dkt. No. 11-104 (filed June 13, 2011) (“Complaint”). The *Merger Order* specifically provided that for purposes of enforcement of the news neighborhood condition, an aggrieved party like Bloomberg “may submit a dispute to the Commission in accordance with the Commission’s program carriage complaint procedures, 47 C.F.R. § 76.1302.” *Merger Order* at 4360 (Appendix A (Conditions), Section III).

⁷ Complaint at 22.

⁸ *Bloomberg L.P. v. Comcast Cable Communications, LLC, Memorandum Opinion and Order*, 27 FCC Rcd 4891 (MB 2012) (“*Neighborhood Order*”).

⁹ *Neighborhood Order* at 4894, ¶ 5.

¹⁰ *Id.* at 4903, ¶ 24.

¹¹ *Bloomberg L.P. v. Comcast Cable Communications, LLC, Memorandum Opinion and Order*, 27 FCC Rcd 9488 (MB 2012) (“*Clarification Order*”).

¹² *Clarification Order*, ¶ 3.

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“stay the effectiveness of other aspects of the *Neighborhood Order* pending Commission review”¹³ including for those systems in which it was undisputed that there was only one SD news neighborhood.¹⁴

Thus, some two and a half years after the adoption of the news neighborhood condition in the *Merger Order* – and more than one year since the Bureau initially said BTV should be neighborhooded within sixty days – BTV continues to be carried in fewer than half of Comcast’s news neighborhoods, representing a small fraction of Comcast subscribers.

The arguments in this matter are well known and the pleading cycle ended more than eight months ago. The duration of the news neighborhood condition is seven years and only approximately four and a half years remain before it expires under the provisions of the *Merger Order*, that is to say that nearly 36% of the time required for the conditions has been allowed to run without full and meaningful implementation by Comcast of the news neighborhood condition. The Commission has previously “committed to monitor and vigorously enforce Comcast’s compliance with the conditions of the *Merger Order*.”¹⁵ After more than 29 months, over two years longer than the 180 days provided to the Commission to review the Merger, Bloomberg respectfully requests that the Commission enforce the Condition and issue a final decision on Bloomberg’s Complaint.

Bloomberg greatly appreciates the work of the Media Bureau in recognizing Comcast’s egregious violations of the terms of the news neighborhood condition included in the *Merger Order* and the *Neighborhood Order*. Bloomberg is filing this letter, however, to request respectfully that it is past time for the Commission to expeditiously act on this matter and direct Comcast to immediately move BTV into every SD news neighborhood on each of Comcast’s channel lineups in the top-35 DMAs.

Very truly yours,



Stephen Díaz Gavin

cc:

Arthur Block (Comcast)
Lynn R. Charytan (Comcast)
Sarah L. Gitchell (Comcast)

¹³ *Id.*, ¶ 1.

¹⁴ Fifty nine (59) channel lineups are in this category (“Bucket 2B”).

¹⁵ Letter from Chairman Julius Genachowski to the Honorable Al Franken, MB Dkt. No. 10-56 (dated July 10, 2012).

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