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	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2012 **Released: August 14, 2012**

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we clarify our *Memorandum Opinion and Order*[1] in the above-captioned proceeding ("*Neighborhood Order*"), grant Comcast Cable Communications, LLC ("Comcast") a limited extension of time to comply with particular aspects of the *Neighborhood Order* as agreed upon by the parties, and, on our own motion, stay the effectiveness of other aspects of the *Neighborhood Order* pending Commission review.

2. Bloomberg L.P. ("Bloomberg") and Comcast agreed in principle to a partial stay and a partial extension of time of the *Neighborhood Order*. Specifically, they agreed (i) that Comcast will place Bloomberg Television ("BTV") in a news neighborhood on lineups where BTV is not in a news neighborhood and the only vacant channel in a news neighborhood is below channel 100, (ii) to an extension of time until August 15, 2012 with respect to headends that have only a standard definition ("SD") news neighborhood and that neighborhood has no adjacent vacant channel, (iii) that the Media Bureau shall decide the proper remedy for headends with "high definition" ("HD") news neighborhoods through a clarification, and (iv) to a stay for the remaining neighborhoods pending Commission review.[2]

3. We clarify that the *Neighborhood Order* decided only the issue of whether BTV's SD programming ("BTV SD") is entitled to carriage in an SD "news neighborhood"[3] on Comcast's channel lineup. 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. Further,

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

[2] Bloomberg L.P.'s Response to the Media Bureau's Request for Additional Information Regarding High Definition News Neighborhoods, MB Docket No. 11-104, at 7-9 ("*Bloomberg's June 19 Filing*").

[3] *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, 26 FCC Rcd 4238, 4358 (App. A, Sec. III.2) (2011) ("*Comcast-NBCU Order*"). *See infra* ¶ 3 (explaining the "news neighborhood" condition and the Bureau's interpretation of that condition).

pending action by the Commission on the parties' applications for review, 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. For those headends that have a single SD news neighborhood with no adjacent vacant channel, we grant Comcast's request for a brief extension of time to comply with the *Neighborhood Order*, as agreed to by the parties. Finally, for the remaining headends for which Comcast is required to "neighborhood" Bloomberg pursuant to the *Neighborhood Order*, the Request for Stay of the *Neighborhood Order* is moot because Comcast has completed its compliance on those headends.

II. BACKGROUND

4. On May 2, 2012, the Media Bureau issued the *Neighborhood Order*, granting in part a complaint filed by Bloomberg. Bloomberg claimed that its 24-hour business news channel, BTV, was entitled to relief under the "news neighborhooding" condition adopted in the *Comcast-NBCU Order*.[4] That condition requires Comcast to carry all independent news and business news channels in a neighborhood if it places any such programming in a neighborhood of similar programming. The condition states that "neighborhooding" is "placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup."[5] In the *Neighborhood Order*, the Bureau further clarified the terms of the condition. We concluded:

> (i) that the condition applies to the channel lineups existing on Comcast's systems at the time the *Comcast-NBCU Order* was adopted as well as future channel lineups; (ii) that four news or business news channels within any five adjacent channel positions qualifies as a "significant number or percentage of news and/or business news channels" and therefore constitutes a neighborhood for purposes of the news neighborhooding condition; (iii) that the term "news channel" refers to a channel carrying general interest news programming; and (iv) that, if a Comcast system has more than one news neighborhood, the condition obligates Comcast to carry independent news and business news channels in at least one such neighborhood, but not in all news neighborhoods, in a particular neighborhood, or in one consolidated news neighborhood.[6]

After reviewing the record, we concluded that Comcast places a significant number of news and business news channels substantially adjacent to one another in many systems' channel lineups, thus forming news neighborhoods, and that BTV is not included in news neighborhoods on some systems that have such news neighborhoods.[7]

5. On June 1, 2012, Comcast filed an Application for Review of the *Neighborhood Order*, arguing (i) that the "four news networks on five adjacent channels" definition of a neighborhood was erroneous,[8] (ii) that the condition should not apply to channel groupings that existed at the time of the

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[4] In the *Comcast-NBCU Order*, the Commission granted the application of Comcast, General Electric Company, and NBC Universal, Inc. to assign and transfer control of licenses from General Electric Company to Comcast, subject to Comcast voluntarily agreeing to certain conditions.

[5] *Comcast-NBCU Order*, 26 FCC Rcd at 4358 (App. A, Sec. III.2).

[6] *Neighborhood Order*, 27 FCC Rcd at 4891, ¶ 2.

[7] *Neighborhood Order*, 27 FCC Rcd at 4902-3, ¶ 24.

[8] Application for Review of Comcast Cable Communications, LLC, MB Docket No. 11-104, at 7-15 (filed June 1, 2012) ("*Comcast's Application for Review*").

transaction,[9] and (iii) that the Bureau's construction of the condition infringes on Comcast's editorial discretion as protected by the First Amendment.[10] On June 1, 2012, Comcast also filed a Motion for Extension of Time to Comply with the *Neighborhood Order,* seeking additional time to move BTV on certain headends. The Motion seeks a 45-day extension to comply—until August 15, 2012—for about one third of the headends at issue.[11]

6. On June 1, 2012, Bloomberg filed an Application for Review of the *Neighborhood Order* asking the Commission to review (i) the Bureau's decision not to require Comcast to place BTV in every neighborhood,[12] (ii) the Bureau's decision to let Comcast pick the neighborhood in which it places BTV,[13] and (iii) the Bureau's failure to decide whether CurrentTV and other networks are news channels.[14]

7. On June 8, 2012, Comcast filed a Motion for Stay of the *Neighborhood Order*, arguing that Bloomberg's Application for Review might result in a decision by the full Commission that Comcast has to place BTV in different neighborhoods than the *Neighborhood Order* currently requires.[15] Comcast argues that rearranging its channel lineups twice would cause irreparable harm to Comcast and confuse consumers, and asserts that a stay would not harm Bloomberg.[16]

8. The parties met with Commission staff on June 14, 2012 to discuss Comcast's Motion for Stay. In that meeting, the parties came to an agreement in principle as follows: (i) on headends[17] with only one SD news neighborhood, no HD news neighborhood, and a vacant channel adjacent to the SD neighborhood, Comcast will place BTV in the neighborhood by July 1, 2012;[18] and (ii) on headends with only one SD news neighborhood and no HD neighborhood but no vacant channel adjacent to the neighborhood, Comcast will place BTV in the neighborhood by August 15, 2012.[19] For these two groups of headends, Comcast's Motion For Stay is now moot due to the agreement and, pursuant to the parties' agreement, we grant a brief extension until August 15, 2012, for the headends referenced in (ii) above.

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[9] *Comcast's Application for Review* at 16-22.

[10] *Comcast's Application for Review* at 23-25.

[11] Motion for Partial Extension of Time filed by Comcast Cable Communications, LLC, MB Docket No. 11-104, at 1-5 (filed June 1, 2012).

[12] Application for Review filed by Bloomberg L.P., MB Docket No. 11-104, at 7-20 (filed June 1, 2012) ("*Bloomberg's Application for Review*").

[13] *Bloomberg's Application for Review* at 18-19.

[14] *Bloomberg's Application for Review* at 20-22.

[15] Motion for Expedited Stay of Comcast Cable Communications, LLC, MB Docket No. 11-104, at 6-11 (filed June 8, 2012) ("*Stay Petition*").

[16] *Stay Petition* at 13-20.

[17] The headends at issue in this dispute are headends in the top-35 most populous DMAs. *See Neighborhood Order*, 27 FCC Rcd at 4894, 4903, ¶¶ 6, 27.

[18] In order to meet the consumer notification requirement on headends with a vacancy in the news neighborhood, Comcast will carry BTV in two locations—at the new, neighborhooded channel position, and at the old, existing channel position until consumers have sufficient notice that Comcast will discontinue carriage at the old position. Comcast has stated that it will voluntarily carry BTV HD on any headend that has only a high definition news neighborhood. Letter from David H. Solomon and J. Wade Lindsay, Counsel for Comcast Communications LLC, to William T. Lake, Chief, Media Bureau, Federal Communications Commission, MB Docket No. 11-104, at 4 (June 19, 2012) ("*Comcast's June 19 Letter*").

[19] *See Comcast's June 19 Letter* at 4; *Bloomberg's June 19 Filing* at 7-9.

The parties did not agree, however, on whether Comcast could satisfy the *Neighborhood Order* by placing BTV HD into an HD news neighborhood and accordingly did not agree on appropriate relief for the remaining headends. Comcast argues that placing BTV HD in an HD neighborhood would satisfy the *Neighborhood Order*'s requirements;[20] Bloomberg disagrees.[21] At the June 14, 2012 meeting, the parties asked the Bureau to clarify how the *Neighborhood Order* applies to HD channels and neighborhoods, and each filed a letter in response to that meeting[22] and replied to the other party's letter.[23]

III. DISCUSSION

A. Clarification

9. We clarify that the *Neighborhood Order* addressed only carriage of BTV SD in SD news neighborhoods. As Bloomberg points out in *Bloomberg's June 19 Filing*, our analysis considered only headends with SD news neighborhoods.[24] Furthermore, the relief Bloomberg sought in its complaint was necessarily limited to SD carriage under the news neighborhooding condition, because Comcast did not carry Bloomberg HD before release of the *Neighborhood Order*.[25] Comcast is correct that "[t]he scope of Bloomberg's complaint cannot change the meaning of the [news neighborhooding] Condition."[26] But 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 that complaint, we need not decide at this time how the condition applies to HD carriage.[27]

B. Stay

10. Based on various arguments raised on review by Bloomberg—*e.g.,* whether the Bureau should have decided that BTV is entitled to choose the news neighborhood in which it is carried—the Commission could direct Comcast to place BTV in different neighborhoods than the *Neighborhood Order* currently requires. To address this, 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 whether those neighborhoods are HD or

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[20] *Comcast's June 19 Letter* at 5-12.

[21] *Bloomberg's June 19 Filing* at 2-7.

[22] *See Comcast's June 19 Letter* and *Bloomberg's June 19 Filing*.

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

[24] *Bloomberg's June 19 Filing* at 4-5 (citing *Neighborhood Order*, 27 FCC Rcd at 4903, n.88 and Answer at Exhibit 5 at 4, ¶ 16).

[25] Complaint at 10, ¶ 23 ("BTV HD is not currently carried by Comcast."); Reply at 21 ("Comcast does not widely carry BTV's HD feed").

[26] *Comcast's June 21 Letter* at 5.

[27] Although Comcast has volunteered to carry BTV HD on any headend that has only an HD news neighborhood, we note that Comcast is not required to do so under the *Neighborhood Order,* as that order decided only the SD carriage issue. *Comcast's June 19 Letter* at 4.

SD), and (iv) has no vacant channel adjacent to any SD news neighborhood.[28] We believe that staying the effectiveness of the *Neighborhood Order* with respect to these headends will help avoid and reduce disruption to consumers that could arise if Comcast were required to adjust channel lineups more than once if the Commission grants Bloomberg's Application for Review or otherwise directs Comcast to comply with the news neighborhooding condition differently than does the Bureau's *Neighborhood Order*.

11. We find that the novelty and importance of the issues presented warrant an administrative stay of certain aspects of the *Neighborhood Order* to provide the Commission an opportunity to resolve the issues on review.[29] This will be the first time the Commission has had an opportunity to address the implementation of the news neighborhooding condition, and as Comcast points out, it will affect how Comcast must handle similar requests from other independent news networks.[30] The arguments raised on review by Bloomberg could lead to a channel placement remedy that conflicts with the Bureau's interpretation. While harms to both parties may result from either compelling immediate compliance or granting a stay, if we compel immediate compliance with respect to certain headends, Comcast may have to undertake multiple channel realignments to comply with the news neighborhooding condition, and a stay will avoid potential disruption to consumers and any affected third-party programmers in the event that the Commission subsequently reverses or modifies the Bureau's decision.[31] Accordingly, we conclude that grant of a stay is equitable and will serve the public interest. We take this action on our own motion to preserve the status quo until the Commission has an opportunity to consider the parties' Applications for Review.[32]

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[28] Bloomberg has defined five "buckets" of lineups as follows, and as specified in binders that counsel to Bloomberg provided to counsel to Comcast and Commission staff at the June 14, 2012 meeting.: (i) Bucket 1—lineups where Bloomberg is not in a news neighborhood and the only vacant channel adjacent to a news neighborhood is in an SD neighborhood below channel 100; (ii) Bucket 2A—lineups where Bloomberg is not in a news neighborhood, where the only news neighborhood is an SD news neighborhood below channel 100, and there is no vacant channel adjacent to the news neighborhood; (iii) Bucket 2B—lineups where Bloomberg is not in a news neighborhood, where there are both SD and HD news neighborhoods, and neither neighborhood has a vacant adjacent channel; (iv) the HD-Only Bucket—lineups where the only news neighborhood is an HD news neighborhood , and (v) the Other Bucket—lineups that fall outside of the other defined buckets, which include lineups with multiple neighborhoods. *Bloomberg's June 19 Filing* at 8. Comcast includes six lineups in Bucket 1 that Bloomberg considers to be Bucket 2B lineups, and Comcast agreed to move BTV to an SD news neighborhood on July 1, 2012 on those headends, along with the headends that Bloomberg deems Bucket 1. *Comcast's June 21 Letter* at 8, n.44. Because this interpretation is favorable to Bloomberg, we accept Comcast's analysis. We further clarify that Comcast is not required to reposition BTV in HD-Only Bucket lineups because the *Neighborhood Order* dealt only with the issue of whether BTV in SD was entitled to carriage in SD neighborhoods. Finally, on our own motion, we stay the effectiveness of Comcast's obligation to reposition BTV in Bucket 2B or Other Bucket lineups because we want to prevent Comcast from having to make multiple lineup changes in the event that the Commission grants Bloomberg's or Comcast's Application for Review.

[29] In taking this action on our own motion for the reasons explained, we find it unnecessary to address whether Comcast's showings in the Stay Petition would satisfy any of the traditional requirements for a stay. *See, e.g., Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Hispanic Information and Telecomm. Network, Inc*., 20 FCC Rcd 5471, 5480 (2005).

[30] *Comcast's July 19th Letter* at 5 ("The Bureau must take into account the fact that the Condition applies to any independent news network and will not be used exclusively by Bloomberg.").

[31] *See Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, 27 FCC Rcd 5613, 5615, ¶ 5 (2012). .

[32] *See, e.g., AT&T Services, Inc. & Southern New England Telephone Co. v. Madison Square Garden, LP and Cablevision,* 26 FCC Rcd 14293 (MB 2011).

C. Motion for Extension of Time

12. In its Motion for Extension of Time, Comcast explains that it will need more time to adjust channel lineups on headends that have a single SD neighborhood with no adjacent unoccupied channel, "primarily because it will be required to move a network currently placed in or adjacent to the news neighborhood in order to make room for BTV."[33] Comcast explains that an extension of time until August 15, 2012, for such headends is necessary to "provide timely advance notice to affected subscribers of the impending channel relocations . . . through a message on his or her bill at least 30 days in advance of the relocation."[34] Bloomberg agrees in principle to this extension of time until August 15, 2012 with respect to these "Bucket 2A" channel lineups.[35] We agree with Comcast that granting an extension of time where necessary to provide timely notice of channel relocations is consistent with Commission precedent seeking to avoid and reduce disruption of service to subscribers.[36] Accordingly, we grant Comcast's Motion for Extension of Time until August 15, 2012 with respect to channel lineups on headends that have a single SD news neighborhood with no adjacent unoccupied channel, as described above.

IV. CONCLUSION

13. For the reasons stated above, we clarify that the *Neighborhood Order* considered only whether the *Comcast-NBCU Order*'s news neighborhooding condition entitles BTV SD to carriage in SD news neighborhoods, and therefore direct Comcast to carry BTV SD in SD news neighborhoods on headends where the channel lineup has only one SD news neighborhood and no HD news neighborhood. On our own motion, we stay the effectiveness of the *Neighborhood Order* with respect to certain headends, as explained above, pending Commission review. Finally, we grant Comcast's Motion for Extension of Time to the extent described above.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED**, pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, we declare that the *Neighborhood Order* addressed only the issue of whether Bloomberg Television in standard definition was entitled to carriage in standard definition neighborhoods on Comcast's headends.

15. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), the effectiveness of certain aspects of the *Neighborhood Order* **IS STAYED** pending Commission review, to the extent described above.

16. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), Comcast's Motion for Partial Extension of Time **IS GRANTED**.

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[33] Motion for Partial Extension of Time filed by Comcast Cable Communications, LLC, MB Docket No. 11-104, at 2 (filed June 1, 2012).

[34] *Id*. at 3.

[35] *See* Bloomberg's Response to the Motion for Partial Extension of Time of Comcast Cable Communications, LLC, MB Docket No. 11-104, at 3. The Buckets are defined *supra*, note 27. *See also Bloomberg's June 19 Filing* at 9. Bloomberg also agreed to an extension of time with respect to Bucket 2B lineups. *Id*. But, as discussed above, we stay the requirements of the *Neighborhood Order* for Bucket 2B lineups, which makes the extension of time issue for those lineups moot.

[36] *Id*. at 5 (quoting *Southern Television System Corp*., 6 FCC 2d 569 (1966)).

17. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.[37]

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

[37] *See* 47 C.F.R. § 0.283.