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REDACTED-PUBLIC VERSION

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Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
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Washington, DC 20554

Re: Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer of Control of Licenses, MB Docket 10-56

Dear Ms. Dortch:

On October 22, 2010, Comcast Corporation ("Comcast") filed an ex parte letter[1] responding to a letter filed by Bloomberg L.P. ("Bloomberg") on September 30, 2010.[2] In the October 22 letter, Comcast advances a variety of arguments in opposition to Bloomberg's position that, if the Commission ultimately decides to approve the merger of Comcast and NBC Universal, Inc. ("Merger"), the Commission should require Comcast to place existing business news channels on channels contiguous and adjacent to CNBC everywhere Comcast carries CNBC ("neighborhooding").[3] Bloomberg herein responds to Comcast's October 22 Letter and also addresses certain information contained in Comcast's October 18, 2010 response to the Media Bureau's Second Information and Document Request.[4]

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[1] Letter from Michael H. Hammer, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket 10-56, (filed Oct. 22, 2010) (the "October 22 Letter").

[2] Letter from Stephen Díaz Gavin, Counsel for Bloomberg, L.P., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket 10-56, (filed Sept. 30, 2010) ("September 30 Letter").

[3] See Bloomberg L.P. Petition to Deny, MB Docket No. 10-56, at 3-4 (filed June 21, 2010).

[4] Responses of Comcast Corporation to the Commission's Second Information and Document Request, MB Docket No. 10-56 (filed Oct. 18, 2010) ("Response to Second Information Request").

Comcast Recognizes the Importance of Neighborhooding

Before responding to Comcast's inaccurate, misleading, and often unsubstantiated arguments, however, Bloomberg will review briefly what the record to date reveals about the importance of neighborhooding. Channel placement can have a profound effect on a network's viewership. With respect to business news programming, for example, the evidence demonstrates that the failure to place Bloomberg TV® ("BTV") in a business news neighborhood with CNBC decreases BTV's viewership by 66% and decreases the hours spent watching BTV by 95%.[5] Conversely, when BTV is placed in the same neighborhood as CNBC, CNBC's viewership falls by 22% and the number of hours spent watching CNBC falls by 28%.[6] As a result, notwithstanding the general trend among MVPDs to group channels into genre-themed neighborhoods, the Merger provides Comcast with a strong incentive to place BTV far away from CNBC. By failing to neighborhood business news channels, Comcast will use its control over distribution to discriminate against competitors in order to protect its investment in CNBC, NBCU's second most profitable cable network.[7]

{{[redacted]

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[5] See Opening Statement of Dr. Leslie Marx, Professor of Economics, Duke University, Federal Communications Economist Panel Discussion, August 26, 2010, MB Docket No. 10-56, at 2 (filed Sept. 14, 2010); Leslie M. Marx, Professor of Economics, Duke University and former Chief Economist, Federal Communications Commission, Economic Report on the Proposed Comcast-NBC Universal Transaction, Appendix, Table 12 at 23 (submitted as Ex. 3 to Bloomberg L.P. Petition to Deny, MB Docket No. 10-56) (filed June 21, 2010). The analyses performed by Dr. Marx define a channel neighborhood as plus or minus five channels. Data limitations prevent an analysis of the effects of channel adjacency, which would presumably be larger.

[6] See id.

[7] See Andrew Edgecliffe Johnson, CNBC Profits From A Crisis, FT.com, January 27, 2010, available at http://cachef.ft.com/cms/s/0/58992544-0b77-lldf-823200144feabdcO,sOI =l.html?SID=google (last visited Nov. 1, 2010) ("NBC Universal does not disclose such numbers, but CNBC is reputed to have become its second-most lucrative channel after USA Networks, with an operating profit of between $300m and $400m. As such, it serves as a microcosm of what Comcast sees in NBC Universal").

[redacted]

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[8] See {{[redacted]}}

[9] See {{[redacted]}}

[10] See {{[redacted]}}.

[11] See {{[redacted]}}.

[12] See {{[redacted]}}.

[13] See {{[redacted]}}.

[redacted]}}

The Continued Importance of Channel Placement

Turning to the specific arguments set forth in Comcast's October 22 letter, Comcast attempts to downplay the need for the Commission to adopt a neighborhooding condition by contending that "the importance of channel location is diminishing,"[14] notwithstanding, as previously noted, its own advocacy of neighborhooding for owned and affiliated networks. Specifically, Comcast argues that the development of advanced search and navigation features will diminish "the need [for viewers] to remember channel numbers."[15]

As reviewed above, Bloomberg has introduced strong evidence of the significant effect that channel placement has on the ratings of both BTV and CNBC. Moreover, on European systems, where neighborhooding has been implemented, BTV provides significant competition to CNBC and has a larger viewership than CNBC in France and Germany.[16] Comcast, by contrast, offers nothing more than speculation that this impact may lessen in the future. {{[redacted].}}[17]

Channel placement has a substantial effect on viewership for a number of reasons. In particular, viewers use their remote control to "flip" channels as well as to pull up electronic programming guides that organize program listings by channel number and automatically focus on the channel that the subscriber is currently watching. It is highly likely that this behavior will continue in the future notwithstanding the development of advanced search and navigation features, and Comcast has not even tried to meet its burden to show that the current effect of channel placement on viewership will diminish significantly in the near term. Furthermore, the Commission must evaluate whether approving the Merger is in the public interest now, not at some unspecified future date.

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[14] October 22 Letter at 4.

[15] Id. at 4-5.

[16] See Bloomberg Reply to Comcast-NBCU Opposition at 31-32 (filed Aug. 19, 2010).

[17] See supra at note 8.

The Reasonableness and Feasibility of Neighborhooding

Comcast next maintains that neighborhooding business news channels would be difficult to accomplish and cause substantial consumer confusion. As Bloomberg explained in its September 30 Letter, it is technologically simple to rearrange digital channels, and Comcast does not attempt to refute this point.[18] Rather, it complains that neighborhooding business news channels would have a "cascading effect" throughout Comcast's channel lineup, leading to substantial consumer confusion and anger as well as conflicts with other programmers.[19]

The only example provided by Comcast to demonstrate a "cascading effect" relates to how the channel lineup in Washington, D.C. purportedly would be affected were Comcast required to place BTV and Fox Business News on channels contiguous and adjacent to CNBC. Comcast's example, however, contains several flaws. First, it assumes that a business news neighborhood would be created by moving BTV and Fox Business News so that both networks would be near CNBC's current placement, Channel 39.[20] Clearly, that is not the only alternative. Rather, Comcast could switch CNBC to a position adjacent to BTV and Fox Business News, which are already positioned near each other at Channels 103 and 106. That move would give Comcast a number of simple options for addressing the one other network that would have to be shifted to complete the channel change, including moving C-SPAN 2 from Channel 104 to CNBC's prior placement, Channel 39, or shifting ESPNews from Channel 102 to the vacant Channel 179, where it would be adjacent to the NFL Network, another sports channel.[21]

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[18] See September 30 Letter 2-3. Along these lines, Bloomberg would be satisfied if the neighborhooding condition only applied to digital channels.

[19] See October 30 Letter at 3.

[20] See id. at 2.

[21] See Comcast Washington, D.C. Channel Lineup (attached as Exhibit 1). While Comcast also complains about the burden of moving HD business news channels, Comcast's system in Washington D.C. already places CNBC HD (Channel 819) and Fox Business News HD (Channel 821) in the same neighborhood, although BTV does not offer an HD feed. See id. Also, while Bloomberg previously suggested that the neighborhooding remedy apply to "all networks competing with NBC networks being acquired," Bloomberg does not believe that a condition of this breadth is necessary. A neighborhooding condition need only apply to any networks that compete with an NBC network that occupies a dominant position in its market. Moreover, as subsequently explained at greater length, in assessing whether the transaction is in the public interest, the Commission should take special care to ensure that diversity in news and information sources is preserved; see infra at 8, so that Business News Channels like BTV could be placed in a "News Neighborhood" along with News Channels as a reasonable means of ensuring such diversity. Bloomberg would define a "Business News Channel" as a video programming network whose programming is focused on business and financial news reporting and analysis during the hours from 6:00 AM through 4:00 PM in the U.S. Eastern Time Zone, whenever U.S. securities and commodities exchanges are open and operating. A "News Channel" shall be defined as a video programming network, specifically including a Business News Channel, focused on news and public affairs programming for at least ten (10) hours during the period 6:00 AM through 10:00 PM in the U.S. Eastern Time Zone.

While Comcast suggests that such channel changes would upset customers and require the company to undertake a herculean educational effort, its claims defy credulity. In the first place, as Bloomberg has previously explained, any resulting confusion would be quickly remedied by the ease with which consumers would find channels once they are organized more logically.[22] Indeed, this is why newer MVPDs, including satellite (DirecTV and DISH) and telco (FIOS and U-Verse) distributors, all have genre-based channel lineups that place CNBC, BTV, and Fox Business News close to one another.

Moreover, Comcast's extensive history of implementing channel changes belies the company's Chicken-Little-like claims of what would occur were the Commission to adopt a neighborhooding condition.[23] In particular, Comcast has frequently changed channel placements in the past to benefit its own affiliated channels. For example, earlier this year, Comcast moved Comcast SportsNet California from Channels 68 and 89 to Channel 41 in the San Francisco/Bay Area so that it would be located near other sports channels, such as ESPN and ESPN2. Comcast, furthermore, made this change even though it resulted in a "cascading effect" that required three other popular channels to change positions: TBS; Food Network; and QVC.[24] Similarly, in 2008, Comcast moved the Golf Channel, which it owns, from Channel 65 to Channel 31 in Pittsburgh so that it would be positioned next to other sports channels. MSNBC was previously located on Channel 31, and was moved to Channel 183. At the time, NBC complained that it was "unhappy and disappointed" with Comcast's decision.[25]

In its Petition to Deny, Bloomberg demonstrated that Comcast often makes channel changes on its own systems.[26] Indeed, in some major DMAs, hundreds of channel changes have occurred. If channel changes posed such difficulties for the company or caused widespread consumer anger and confusion, then it is doubtful that Comcast would continue to alter channel positions with such frequency.

Recognizing that Comcast's past practice of frequent channel changes dramatically undermines its argument against a neighborhooding condition, Comcast tries to cast doubt on Bloomberg's

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[22] See September 30 Letter at 3.

[23] For example, Comcast changed its lineup in Washington, D.C. as of January 2010, and has subsequently made changes to it, including putting MASN-2 at Channel 5 in its sports neighborhood, adjacent to Versus.

[24] See Comcast to Reposition Four Networks in Bay Area, available at http://comcastcalifornia.mediaroom.com/index.php?s=43&item=353 (last visited Nov. 8, 2010).

[25] See MSNBC's PA Move, available at http://www.mediabistro.com/tvnewser/msnbc-s-pa-move_b20131 (last visited Nov. 8, 2010); Comcast Shuffles Channel Lineup, available at: http://kdka.com/consumer/Comcast.channel.changes.2.773918.html (last visited Nov. 8, 2010).

[26] See Bloomberg L.P. Petition to Deny, MB Docket No. 10-56, at Ex. 4 (filed June 21, 2010) ("Petition to Deny").

analysis. Its attacks, however, are unavailing. Bloomberg obtained the raw channel lineup data for its analysis from Tribune Media Services (TMS), [[[27]]] The TMS data contains the dates that channels became effective within each system's channel lineup. These effective dates were analyzed to observe, for selected DMAs, instances where a unique channel had one or more effective date entries after its first entry, thus indicating that it had changed positions within the channel lineup. For example, if ESPN Classic was added to a Comcast system on March 1, 2007, and changed channels on April 25, 2008, the data set would contain two effective dates for ESPN Classic, March 1, 2007, and April 25, 2008, and the latter date would be flagged as a channel change. The occurrences of such latter effective dates for unique channels within the datasets were then counted, while controlling for repetitious entries across systems within a DMA. Finally, bar graphs were constructed illustrating the total number of unique channels that changed positions on specific dates.[28]

Comcast claims that Bloomberg in its analysis may have included as a channel change lineup modifications where no network actually changed positions.[29] But contrary to Comcast's suggestion, Bloomberg counted neither the "addition of a network" as a channel change nor "the mapping of an HD network that is already carried to a second channel number."[30] Neither did Bloomberg "inflat[e] the number of actual channel changes by counting one network's change in channel position on, for example, 100 different channel lineups as 100 changes."[31] Rather, within each DMA but one, Bloomberg's analysis excluded so-called repetitive channel changes.[32]

Although Bloomberg submitted its analysis of Comcast's channel lineup changes in June, Comcast did not question the validity of Bloomberg's analysis or the underlying data until October. Significantly, Comcast has not provided any of its own data on channel changes to rebut

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[27] See [[ ]]

[28] See Petition to Deny at Ex. 4.

[29] See October 22 Letter at 4.

[30] Id.

[31] Id.

[32] Because the data file for the New York DMA was so large, it was divided into five separate files, and Bloomberg's initial analysis did not take into account potential duplicate channel lineup changes across the five files. When Bloomberg aggregated the channel changes from each of the five files into one file to check for duplicates, the total number of channel changes for the New York DMA fell from nearly 2,000 to 1,072, still a substantial number.

Bloomberg's analysis, despite the fact that Comcast is clearly in the best position to provide the Commission with such information.

Comcast's Limited Neighborhooding Trials

Notwithstanding Comcast's stated concerns with repositioning channels, Comcast recently informed the Commission that it is testing "in very limited markets a channel lineup that neighborhoods programming networks in channels over 100, typically digital and HD tiers of service and the channels that are less likely to create significant customer disruption."[33] It then states that these trials will be used to gauge "how burdensome and disruptive" neighborhooding would be to "Comcast and its customers."[34] Far from reassuring the Commission that Comcast is giving serious consideration to the implementation of genre-based neighborhoods that will treat both affiliated and unaffiliated channels fairly, these tests only highlight Comcast's intent to utilize its power over channel placement as an anticompetitive weapon to benefit its affiliated channels and harm unaffiliated channels.

Based on information provided on Comcast's website, these trials are only occurring in three small Indiana towns,[35] and business news channels are being affected the same way on each system. CNBC both maintains its position on Channel 36 and has been given a second channel position on Channel 115, where it has been placed next to BTV (Channel 116) and Fox Business (Channel 117).[36] BTV and Fox Business, on the other hand, have not been provided with a second channel position next to CNBC's Channel 36 placement. The likely consequence of this repositioning is that CNBC will benefit by gaining a new channel position and adding prior BTV and Fox Business viewers who are flipping channels. Prior CNBC viewers, on the other hand, will generally continue watching CNBC at its initial position (Channel 36). As a result, BTV and Fox Business will be harmed since they have not been provided with channel positions in that neighborhood.

Properly understood, these limited trials do not represent a serious attempt by Comcast to test the creation of genre-based neighborhoods that treat affiliated channels and unaffiliated channels fairly. Rather, they represent a tactical maneuver to convince the Commission that it is open to neighborhooding while the company is really paving the way to reposition channels in a manner that

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[33] See October 22 Letter at 5; Response to Second Information Request at 32.

[34] October 22 Letter at 5.

[35] See http://www.comcast.com/xflineup/lineup.html (containing channel lineups for Logansport, Indiana; Peru, Indiana; and Wabash, Indiana) (last visited Nov. 5, 2010).

[36] See http://www.comcast.com/xflineup/data/XFINITY_Lineup_Logansport.pdf (last visited Nov. 5, 2010); http://www.comcast.com/xflineup/data/XFINITY_Lineup_Peru.pdf (last visited Nov. 5, 2010); http://www.comcast.com/xflineup/data/XFINITY_Lineup_Wabash.pdf (last visited Nov. 5, 2010).

will favor its affiliated channels and discriminate against unaffiliated channels. These trials, therefore, not only cast considerable doubt on all of the objections to channel repositioning set forth by Comcast,[37] but also highlight the need for the Commission to adopt the neighborhooding remedy proposed by Bloomberg in this proceeding.

Availability of Data Underlying Dr. Leslie Marx's Economic Reports

Comcast also complains that the backup materials submitted by Bloomberg in support of Dr. Leslie Marx's June 21, 2010 and August 18, 2010 economic reports were substantially incomplete.[38] When Comcast requested the data underlying Dr. Marx's initial report, Bloomberg was unable to supply it immediately because the relevant licensing agreements did not permit Dr. Marx to release it to third parties.[39] However, both Dr. Marx and Bloomberg, through counsel, worked diligently to address the situation as quickly as possible. In particular, they engaged in what turned out to be protracted negotiations to obtain the necessary approvals so that the data could be provided without violating the licensing agreements.[40]

While working to obtain permission to disclose the data underlying Dr. Marx's reports, Bloomberg, as a courtesy, provided Comcast with stata logs of many of Dr. Marx's analyses on June 29, 2010. Then, as soon as Dr. Marx obtained the consent of the licensors of the data, Bloomberg filed copies of the raw data underlying Dr. Marx's reports with the Commission and provided copies to Comcast.[41] Moreover, with respect to all sets of data other than those from MRI, Bloomberg

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[37] Comcast, for example, provides no evidence in support of its assertion that "broadcast networks' statutory and PEG channels' contractual rights to be located on particular channels" would prevent it from neighborhooding business news channels, October 22 Letter at 3, and the company's Indiana trials demonstrate that this is not the case. Indeed, based on an examination of numerous Comcast channel lineups, it does not appear that CNBC, BTV, or Fox Business are currently located next to broadcast or PEG channels with any degree of frequency.

[38] See October 22 Letter at 6.

[39] See Letter to William T. Lake, Chief, Media Bureau, Federal Communications Commission from Stephen Díaz Gavin, MB Docket No. 10-56 (filed Aug. 9, 2010).

[40] See id; see also Letter to William D. Freedman and James R. Bird from Stephen Díaz Gavin, MB Docket No. 10-56 (filed Sept. 20, 2010).

[41] See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Stephen Díaz Gavin, MB Docket No. 10-56 (filed Oct. 12, 2010); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Stephen Díaz Gavin, MB Docket No. 10-56 (filed Oct. 19, 2010). Upon review, Bloomberg inadvertently failed to submit a set of supplemental data that combined Tribune Media Services data and GfK Mediamark Research & Intelligence, LLC, ("MRI") data. Such data was provided on November 24, 2010. See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Stephen Díaz Gavin, MB Docket No. 10-56 (filed Nov. 24, 2010).

provided the Commission and Comcast subsets of the data that Dr. Marx obtained by limiting variables of the original data sets as well as the programs necessary to replicate the regressions Dr. Marx performed on the limited subsets of data. Then, on November 9, 2010, Bloomberg provided the relevant subsets of the MRI data as well as the programs necessary to replicate the regressions Dr. Marx performed on those subsets.[42] Further, upon receiving additional consents from vendors, on November 24, 2010, Bloomberg provided a further set of data and regression programs for Dr. Marx's analysis. As such, both Comcast and the Commission now have all necessary backup materials.

The First Amendment

Finally, Comcast contends that Bloomberg is seeking "preferential treatment" because of its status as "the last independent source of news programming" and that such treatment would be "at odds with the First Amendment."[43] To be clear, Bloomberg is not seeking preferential treatment from the Commission. Rather, it is asking the Commission, in its assessment of whether this transaction serves the public interest, to sustain its commitment to safeguard competition among news programmers and the diversity of voices providing the American people with news and information. These are vital components of the public interest analysis. The U.S. Supreme Court has stated that "it has long been a basic tenet of national communications policy that 'the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public,'"[44] and the Commission has consistently pursued policies to advance this objective. For example, in its most recent order addressing ownership regulations, the Commission specifically noted that it was "maintain[ing] safeguards to ensure that consumers continue to enjoy the benefits that flow from the operation of multiple, competing sources of news and information."[45]

Neither is taking action to preserve competition and diversity in news programming "at odds with the First Amendment." Rather, advancing these goals lie at the heart of our constitutional framework. As the Supreme Court has explained, "assuring that the public has access to a

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[42] See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Stephen Díaz Gavin, MB Docket No. 10-56 (filed Nov. 9, 2010).

[43] October 22 Letter at 3, n.5.

[44] Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 663-664 (1994) (quoting United States v. Midwest Video Corp., 406 U.S. 649, 668, n. 27 (1972) (plurality opinion) (quoting Associated Press v. United States, 326 U.S. 1, 20 (1945)).

[45] 2006 Quadrennial Regulatory Review, 23 FCC Rcd 2010, para. 51 (2008).

multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment."[46]

Conclusion

For all of the reasons set forth above as well as in Bloomberg's prior filings, the Commission, if it approves the pending application, should require Comcast to place existing business news channels on channels contiguous and adjacent to CNBC everywhere CNBC is carried. Contrary to the arguments advanced by Comcast in its October 22 Letter, the record in this proceeding demonstrates both that channel placement is vitally important to the success of a network and that neighborhooding business news channels is a reasonable, feasible and appropriate remedy that will advance First Amendment values.

If there are any questions regarding this matter, please contact the undersigned at 202-457-6340 or Janet F. Moran at 202-457-5668.

Very truly yours,

Stephen Díaz Gavin
Partner

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[46] Turner, 512 U.S. at 663. Comcast's claim that a neighborhooding condition would be a viewpoint-based speech restriction and thus subject to strict scrutiny under the First Amendment is baseless. Such a condition would not be based on any "particular views taken by speakers on a subject," October 22 Letter at 4, n.5, and is fully consistent with prior government action in merger proceedings to ensure the protection of diversity in news programming by requiring carriage of a non-affiliated news programming channel. See Time Warner Inc., et al., Decision and Order, 123 F.T.C. 171, 197 (1997) ("[T]ime Warner shall execute a Programming Service Agreement with at least one Independent Advertising Supported News and Information National Video Programming Service, unless the Commission determines, upon a showing by Time Warner, that none of the offers of Carriage Terms are commercially reasonable").

Comcast's complaint that the Commission is not allowed to "prejudge what networks are similar" fares no better. October 22 Letter at 4, n.5. The Commission has previously based merger conditions on programming genres, and there is no reason why it cannot do so here. See, e.g., Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable Inc., et al., Memorandum Opinion and Order, MB Docket No. 05-192, 21 FCC Rcd 8203, 8287, ¶¶ 189-90, Appendix B (2006) (establishing condition targeted to Regional Sports Networks). Indeed, if Comcast's view were accepted, the Commission would be powerless to act in a targeted manner to address a particular problem in a particular programming market since it would be powerless to define a market. Finally, there is no merit to Comcast's contention that the First Amendment requires that any decision with respect to channel placement "is inherently left to the editorial discretion of Comcast." October 22 Letter, 4, n.5. See, e.g., 47 U.S.C. § 534(a)(6) (regulating the channel placement of "must-carry" broadcast stations on cable systems). Comcast cites to no precedent indicating that channel positioning constitutes an expressive message that triggers First Amendment scrutiny.