

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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

OPPOSITION TO APPLICATION FOR REVIEW

Comcast Cable Communications, LLC (“Comcast”), pursuant to 47 C.F.R. § 1.115, hereby files this opposition to Bloomberg L.P.’s (“Bloomberg”) Second Application for Review¹ challenging the Media Bureau’s decision to stay implementation of certain aspects of its *Neighborhood Order*² pending Commission review of the novel and important issues implicated by that order.³ Bloomberg’s filing is largely an irrelevant reiteration of its dissatisfaction that neither Comcast nor the Bureau has capitulated to Bloomberg’s effort to rewrite the News Neighborhooding Condition to its liking. Bloomberg’s efforts to undermine the Bureau’s rationale for granting the partial stay are unpersuasive and should be disregarded.

¹ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Application for Review (filed Sept. 13, 2012) (“Bloomberg Second Application for Review”).

² *Bloomberg L.P. v. Comcast Cable Communications, LLC*, 27 FCC Rcd 4891 (MB 2012) (the “*Neighborhood Order*”).

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*”).

I. INTRODUCTION AND SUMMARY

The Media Bureau's *Neighborhood Order* found that four news or business news channels within any five adjacent channel positions constitutes a "news neighborhood" for purposes of the News Neighborhooding Condition⁴ and, if a Comcast system has more than one news neighborhood, the Condition obligates Comcast to carry Bloomberg Television ("BTV") in one such neighborhood, but not in all news neighborhoods, in any particular neighborhood, or in one consolidated news neighborhood.⁵ The Media Bureau therefore ordered Comcast to begin carrying BTV in one such news neighborhood "on each headend in the top-35 most populous [DMAs] that (i) carries [BTV], (ii) has a grouping of at least four news channels within a cluster of five adjacent channel positions . . . , and (iii) does not include [BTV] within a news neighborhood."⁶ In short, and as Bloomberg itself puts it, the Bureau "granted Bloomberg's complaint almost in its entirety."⁷

Still dissatisfied, however, Bloomberg filed its First Application for Review, claiming that BTV is entitled to be placed in not just one news neighborhood, as decided by the Media Bureau, but in *all* news neighborhoods found in a given Comcast lineup – even if this means that BTV will appear in three different locations on the lineup (and displace multiple other networks in the process).⁸ Bloomberg also introduced a new theory that the Condition provides BTV a

⁴ *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, 4358, Appendix A § III.2 (2011) (the "Condition") ("*Comcast-NBCUniversal Order*").

⁵ *Neighborhood Order* ¶ 2.

⁶ *Id.* ¶ 27.

⁷ Bloomberg Second Application for Review at 15.

⁸ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Application for Review of Bloomberg L.P. (filed June 1, 2012) ("Bloomberg First Application for Review"). Comcast also sought Commission review of the *Neighborhood Order*. *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Application

duplicative right to be placed in both standard definition (“SD”) and high definition (“HD”) news neighborhoods.⁹

Nothing in the *Neighborhood Order*, however, limited Bloomberg’s remedy only to BTV’s SD feed or in any way precluded Comcast from satisfying the Bureau’s directive by placing BTV’s HD feed in an HD news neighborhood. In short, the Bureau’s ruling on its face provided Comcast with discretion regarding in which news neighborhood – SD or HD – to relocate BTV. Nevertheless, in light of the heightened uncertainty surrounding Comcast’s compliance plans introduced by the more disruptive measures advocated by Bloomberg, Comcast filed a Motion for Expedited Stay of the *Neighborhood Order* on June 8, 2012.¹⁰

On June 14, 2012, the parties met with Media Bureau staff and discussed issues relating to the Stay Petition, including Bloomberg’s claim to have duplicative rights to be carried in both SD and HD news neighborhoods. During that meeting, the parties reached an agreement in principle regarding channel relocations on certain categories of lineups¹¹ but were unable to reach an agreement, *inter alia*, on whether Comcast could comply with the *Neighborhood Order* by placing BTV’s HD feed in an HD news neighborhood.¹² The Media Bureau, therefore, ordered supplemental filings to address Bloomberg’s new claims and indicated that it would decide the SD/HD issue when it issued an order addressing the Stay Petition.¹³

for Review of Comcast Cable Communications, LLC (filed June 1, 2012) (“Comcast First Application for Review”).

⁹ Bloomberg First Application for Review at 5 n.15.

¹⁰ Motion for Expedited Stay of Comcast Cable Communications, LLC, MB Docket No. 11-104, at 6-11 (filed June 8, 2012) (“Stay Petition”).

¹¹ Comcast completed these relocations but did so without prejudice to Commission action on its Application for Review.

¹² *Clarification Order* ¶ 8.

¹³ *Id.*

After granting an interim, partial stay,¹⁴ the Media Bureau issued the *Clarification Order* on August 14, 2012, agreeing with Bloomberg that Comcast may not satisfy the *Neighborhood Order* by placing BTV's HD feed in an HD news neighborhood but must place BTV's SD feed in an SD neighborhood.¹⁵ The Bureau, however, did not address the merits of the Stay Petition, instead acting on its own motion to stay the *Neighborhood Order* with respect to any Comcast lineup that (i) includes BTV's SD feed, (ii) does not carry that feed 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.¹⁶ The Bureau explained that this limited stay was necessary to “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 Condition differently.¹⁷ In addition, given “the novelty and importance of the issues presented,” the Bureau noted that a stay would “provide the Commission an opportunity to resolve the issues on review.”¹⁸

Bloomberg now challenges the Bureau's decision to stay one narrow aspect of the *Neighborhood Order*. Further, while Bloomberg accepted that a stay would have been warranted

¹⁴ See Email from Sarah Whitesell, Deputy Chief, Media Bureau, to David H. Solomon, *et al.* (June 29, 2012, 4:29 pm). In light of this interim stay, Bloomberg is wrong when it asserts that “Comcast was already required to move BTV into news neighborhoods” in the 59 lineups at issue here by July 1, 2012. Bloomberg Second Application for Review at i.

¹⁵ *Clarification Order* ¶ 3. Comcast filed an application for review of the Bureau's findings. *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).

¹⁶ *Clarification Order* ¶ 3.

¹⁷ *Id.* ¶ 10.

¹⁸ *Id.* ¶ 11.

“[i]f Comcast were to prevail on the issue of HD,”¹⁹ it now believes that a stay is *not* warranted because *it* prevailed. Bloomberg’s position is without merit. It is beyond dispute that the various applications for review in this proceeding present the Commission with its first opportunity to address the implementation of the Condition. Further, the Commission’s ruling will necessarily govern how Comcast must handle similar requests from other independent news networks. Moreover, each party supported a stay if the other party was victorious before the Bureau with regard to the SD/HD issue. Under these circumstances, the partial stay is a reasonable and prudent course of action and should be upheld.

II. THE STAY IS APPROPRIATE AND NARROWLY TAILORED

The Media Bureau imposed the limited stay of the *Neighborhood Order* on its own motion. As such, the Bureau was not obligated to evaluate “whether Comcast’s showings in the Stay Petition would satisfy any of the traditional requirements for a stay.”²⁰ The Bureau’s decision was based on the public interest in avoiding disruption to consumers and affected third-party programmers and the need for the Commission to resolve significant issues of first impression created by the Bureau’s implementation of the Condition.²¹ There was ample basis for this decision and it should be sustained.

¹⁹ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, 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, at 19 (filed June 21, 2012).

²⁰ *Clarification Order* ¶ 11, n.29 (citing *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)). See also *Amendment of Part 22 of the Commission’s Rules To Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules*, 7 FCC Rcd 4648 (1992) (granting a stay *sua sponte* even though the four factors for a stay had not been met).

²¹ *Clarification Order* ¶¶ 10-11.

A. The Bureau Had Reasonable Grounds for the Stay

As an initial matter, the Bureau cited reasonable grounds for the narrowly tailored stay. The Bureau explained that it was staying application of the *Neighborhood Order* to a subset of channel lineups in order “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.”²² The Bureau reasoned that, while “harms to both parties may result from either compelling immediate compliance or granting a stay,” compelling immediate compliance could result in significant disruption “to consumers and any affected third-party programmers.”²³ As the Bureau recognized, avoiding and reducing disruption to consumers and innocent third-party programmers serves the public interest,²⁴ and is a valid basis for an administrative stay.²⁵ To that end, the Bureau crafted its stay to protect the interests of consumers and innocent third-party programmers.

The Bureau’s stay is also a reasonable response to the host of significant legal issues associated with implementing the Condition.²⁶ As the Bureau correctly pointed out, “[t]his will be the first time the Commission has had an opportunity to address the implementation of the [C]ondition, and . . . it will affect how Comcast must handle similar requests from other independent news networks.”²⁷ Simple prudence, therefore, supports the Bureau’s reasonable

²² *Id.* ¶ 10, n.28.

²³ *Id.* ¶ 11.

²⁴ *Id.* ¶ 10.

²⁵ Indeed, the Commission ordered a stay in the *Tennis Channel* case precisely to avoid “potential disruption to consumers and any affected third-party programmers.” *The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, MB Docket No. 10-204, Order, FCC 12-50, ¶ 5 (rel. May 14, 2012).

²⁶ *Clarification Order* ¶ 11.

²⁷ *Id.*

caution in implementing the Condition before the full Commission has had the opportunity to interpret the meaning and requirements of the Condition.

B. Bloomberg's Challenge to the Stay is Without Merit

Nothing in Bloomberg's Second Application for Review undermines the fundamental reasonableness of the Bureau's narrowly tailored stay. To begin with, Bloomberg's suggestion that Comcast has been engaged in delaying tactics lacks credibility.²⁸ The reality is that *both* parties – Bloomberg and Comcast – sought Commission review of the *Neighborhood Order*. Moreover, it was because of Bloomberg's First Application for Review that Comcast was compelled to file its Motion for Expedited Stay that gave rise to the *Clarification Order*. Now both parties are seeking Commission review of the *Clarification Order*. In other words, Bloomberg itself recognizes the serious legal issues related to implementation of the Condition, and it cannot credibly suggest that Comcast is engaged in delaying tactics.

Bloomberg's arguments that the Bureau's partial stay is irrational are similarly unpersuasive. Bloomberg begins with an argument that neither the *Neighborhood Order* nor the *Clarification Order* can justify the stay because it was apparent from the face of its original complaint and the *Neighborhood Order* itself that the Bureau was ordering relief for BTV's SD feed only.²⁹ This argument is wrong. As Comcast has already demonstrated, neither the Condition nor the *Comcast-NBCUniversal Order* expressly addressed questions regarding the appropriate treatment of SD and HD feeds under the Condition.³⁰ Rather, the Condition, by its own terms, requires only that Comcast carry BTV in "a neighborhood." The *Neighborhood*

²⁸ Bloomberg Second Application for Review at i.

²⁹ *Id.* at 8-10.

³⁰ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Letter on Behalf of Comcast Cable Communications, LLC to William T. Lake, Chief, Media Bureau, at 2 (filed June 19, 2012).

Order is also silent as to whether Comcast’s neighborhooding obligations apply only to BTV’s SD feed, and does not otherwise suggest that BTV’s HD feed has a separate, duplicative right under the Condition for carriage in a news neighborhood. The *Neighborhood Order* in turn made clear that the Condition does “not require Comcast to carry such channels in every news neighborhood or in a particular neighborhood of Bloomberg’s choosing.”³¹ The fact that the Commission may find to the contrary does not call into question the rationality of the Bureau’s conclusion that the Commission should have the opportunity to render its judgment prior to full implementation.

Bloomberg’s analysis on the potential for consumer disruption also misses the mark.³² In essence, Bloomberg argues that consumer disruption is not a rational basis for a stay because the Condition was itself premised on the possibility that Comcast may have to revise lineups.³³ This argument, however, ignores the fact that the concern underlying the partial stay is not with the initial disruption of realigning channels one time to comply with the Condition, but rather with the possibility that this disruption will have to occur multiple times depending upon the ultimate resolution of this matter by the Commission.³⁴ Bloomberg tries to avoid this central issue by contending that the stayed lineups “are not otherwise [affected] by the issues raised in Bloomberg’s Initial Application for Review.”³⁵ This is beside the point. The issue is not, as

³¹ *Neighborhood Order* ¶ 20.

³² Bloomberg Second Application for Review at 10-11.

³³ Bloomberg also reiterates its tired argument that Comcast exaggerates the concerns about the burdens associated with large-scale channel realignments. *Id.* at 11. Comcast has repeatedly demonstrated that this argument relies on grossly misleading statistics and cannot be credited. Comcast First Application for Review at 10; *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Surreply of Comcast Cable Communications, LLC, at 18-22 (filed Sept. 28, 2011).

³⁴ *See Clarification Order* ¶ 11.

³⁵ Bloomberg Second Application for Review at ii; *see also id.* at 15-17.

Bloomberg asserts, whether Bloomberg has a “right to choose between being neighborhooded in the SD or HD news neighborhood.”³⁶ Rather, it is whether Comcast has the discretion to comply with the Condition by placing BTV’s HD feed into an HD neighborhood (rather than placing BTV SD into an SD neighborhood) – a point that is plainly disputed by the parties and ripe for Commission review.

Bloomberg’s arguments that Comcast is not likely to succeed on the merits of its Second Application for Review³⁷ and that Bloomberg’s First Application for Review does not provide a basis for a stay³⁸ are irrelevant. With regard to Comcast’s likelihood of success on the merits, the four-factor test articulated in *Virginia Petroleum Jobbers* is not applicable to the Bureau’s grant of a stay on its own motion.³⁹ Moreover, with regard to both points, the Bureau’s stay decision was not premised either on a finding of Comcast’s likelihood of success on the merits or on a necessary link to Bloomberg’s First Application for Review. Rather, the Bureau appropriately recognized that a stay is warranted because both parties’ applications for review, as well as the *Clarification Order* itself, raise significant issues of first impression that may lead to different directives from the Commission that would necessarily affect how Comcast must handle similar requests from other independent news networks.⁴⁰ The partial stay therefore appropriately provided the Commission the opportunity to interpret the Condition before it is fully implemented.

³⁶ *Id.* at 15.

³⁷ *Id.* at 12-13.

³⁸ *Id.* at 14-15.

³⁹ *See supra* note 20.

⁴⁰ *Clarification Order* ¶¶ 10-11.

Bloomberg's arguments that the Bureau's stay is not in the public interest are similarly unavailing.⁴¹ Bloomberg essentially ignores the Bureau's finding that the stay *will* serve the public interest by reducing potential disruption to consumers and innocent third-party programmers. Bloomberg does little more than note the fact it has been unable to secure all the relief it desires from the Bureau and protest about "delay" in securing the remainder of the relief to which it believes it is entitled. While Bloomberg is correct that the Media Bureau granted its complaint only in part, Bloomberg's desire to expand the Bureau's interpretation of the Condition in order to further its own business interests does not outweigh the public interest in having the Commission provide clear, unambiguous guidance regarding the interpretation of the Condition before it is fully implemented.

Finally, Bloomberg's assertion that a stay with regard to Comcast's obligation to neighborhood BTV on 59 lineups will significantly interfere with important Commission policies for fostering the development of investigative journalism by cable news networks is simply implausible.⁴²

III. CONCLUSION

For the foregoing reasons, the Commission should deny Bloomberg's Second Application for Review.

⁴¹ Bloomberg Second Application for Review at 15-17.

⁴² *Id.* at 17-19.

Respectfully submitted,

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September 28, 2012

CERTIFICATE OF SERVICE

I, Arthur J. Burke, hereby certify that, on September 28, 2012, copies of the attached “Opposition to Application for Review” were filed through the Commission’s Electronic Comment Filing System and served by hand delivery to the following:

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