

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Applications of Comcast Corporation,
General Electric Company
and NBC Universal, Inc.
For Consent to Assign Licenses or
Transfer Control of Licensees
MB Docket No. 10-56

SECOND PROTECTIVE ORDER FOR COMPLIANCE

Adopted: February 22, 2011

Released: February 22, 2011

By the Chief, Media Bureau:

1. On January 20, 2011, the Federal Communications Commission ("FCC" or "Commission") released a Memorandum Opinion and Order in the matter of the Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. (collectively, the "Applicants") for Consent to Assign Licenses and Transfer Control of Licensees (the "Order"),¹ in which Order the Commission granted the applications subject to conditions. The Applicants and others who may file documents in connection with the Order and in verifying compliance therewith are sometimes referred to individually as a "Submitting Party" and collectively as the "Submitting Parties".

2. As part of the process to verify compliance with the conditions contained in the Order, the Commission is issuing a Protective Order for Compliance governing access to "confidential" information (the "First Protective Order"). By e-mail dated February 21, 2011, Comcast and NBCU requested that the Commission issue an enhanced protective order that would provide additional protection to certain sensitive business data which, if disclosed, would be likely to severely injure the Applicants' businesses (the "Second Protective Order").² For each category of data for which the Applicants seek heightened protection, the Applicants explain why the documents and information at issue are highly confidential and competitively sensitive.

3. Consistent with past practice, the Commission will in this proceeding grant more limited access to those materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace.³ We will permit persons submitting such documents and

1 See, General Electric Company, Transferor, NBC Universal, Inc., and Comcast Corporation, Transferee, Memorandum Opinion and Order, 26 FCC Rcd 48 (2011).

2 E-mail from Michael H. Hammer, Willkie Farr & Gallagher LLP (for Comcast and NBCU) to Jim Bird, Senior Counsel, Office of General Counsel, Transaction Team (February 21, 2011). The Media Bureau is concurrently issuing a First Protective Order governing access to confidential information submitted in this proceeding.

3 See, e.g., Applications of AT&T Inc. and Celco Partnership d/b/a/ Verizon Wireless For Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, Second Protective Order, 24 FCC Rcd 14569 (WTB 2009); Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, Second Protective Order, 24 FCC Rcd 7182 (WTB 2009); Application of

information to designate those materials as Highly Confidential and, as provided below, we will limit access to such materials to Outside Counsel of Record, their employees, and Outside Consultants and experts whom they retain to assist them in this proceeding. We find that such materials are necessary to develop a more complete record on which to base the Commission's decision in this proceeding and therefore require their production. We are mindful of the highly sensitive nature of all information, documents, and data subject to this Order, but we must also protect the right of the public to participate in this proceeding in a meaningful way. We conclude that the protections adopted in this Second Protective Order will give appropriate access to the public while protecting a Submitting Party's competitively sensitive information, and thereby will serve the public interest. We stress that this Second Protective Order covers only documents, portions of documents or data that are referred to in paragraph 6 below and that contain Highly Confidential Information. To the extent that portions of the documents contain data that are referred to in paragraph 6 below but do not contain Highly Confidential Information, they are to be produced in unredacted format or under the First Protective Order issued concurrently herewith, as appropriate. To the extent that a Submitting Party believes that future submissions fall into one of these categories, the Submitting Party must file a letter explaining which category the information falls within, and the Submitting Party may designate as Highly Confidential Information and file under this Second Protective Order only those documents specifically authorized by the Media Bureau.

4. *Acknowledgment.* Any person seeking access to Stamped Highly Confidential Documents subject to this Second Protective Order shall request access pursuant to the terms hereof and must sign the Acknowledgment of Confidentiality in the form attached as Appendix A ("Acknowledgement"). The Acknowledgement shall be filed with the Media Bureau, on behalf of the Commission, and served upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to the Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information, except that, where the person seeking access is one described in either clause 2 or 3 of paragraph 9, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents or Highly Confidential Information to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in clause 2 or 3 of paragraph 9, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction, and unless such objection is resolved in favor of the person seeking access, a person subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information.

5. *Definitions.* As used herein, capitalized terms not otherwise defined in this Second Protective Order shall have the following meanings:

"Stamped Highly Confidential Document" means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO

News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control, MB Docket 07-18, Protective Order, 22 FCC Rcd 12797 (MB 2007) (adopting a second protective order); Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Time Warner Cable Inc., and Comcast Corporation, MB Docket No. 05-192, Order, 20 FCC Rcd 20073 (MB 2005) (adopting a second protective order); News Corporation, General Motors Corporation, and Hughes Electronic Corporation, MB Docket No. 03-124, Order, 18 FCC Rcd 15198 (MB 2003) (adopting a second protective order).

SECOND PROTECTIVE ORDER FOR COMPLIANCE IN MB DOCKET NO. 10-56 before the Federal Communications Commission,” unless the Commission determines, *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term “Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document as “Stamped Highly Confidential Document,” a Submitting Party signifies and represents that it contains information that the Submitting Party believes should be subject to protection under the Freedom of Information Act (FOIA), the Commission’s implementing rules and this Second Protective Order. This Second Protective Order does not constitute a resolution of the merits concerning whether any information submitted under this Second Protective Order would be released publicly by the Commission upon a proper request under FOIA or otherwise.

“Highly Confidential Information” means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from public sources, that the Submitting Party has kept strictly confidential, and that, the Submitting Party claims, constitutes some of its most sensitive business data which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace. Specifically, the portions of the documents or entire documents, if eligible in their entirety – that disclose one or more of the categories of highly competitively sensitive information covered by this Second Protective Order.

“Outside Counsel of Record” or “Outside Counsel” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel’s activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions. The term Outside Counsel of Record includes any attorney representing a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

“Outside Consultants” means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, *i.e.*, Outside Consultants’ activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions. The term Outside Consultants includes any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

“Reviewing Party” means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 9 and 12 of this Second Protective Order.

6. *Category of Highly Confidential Information Covered by This Second Protective Order.*

- *Internal Hulu Governance.* The Order requires NBCUniversal to “submit to the Commission documentation evidencing that its interest in Hulu is purely economic.”⁴ Comcast and NBCU intend to submit a letter from NBCUniversal to Hulu which provides such documentation. The letter may reveal non-public and highly sensitive

⁴ Order at App. A, § IV.C.4.

details about the ownership and control structure of Hulu, which would harm not only NBCUniversal but also Hulu and its non-NBCU owners, who are not parties to this proceeding. Applicants may submit such documentation under this Second Protective Order only to the extent that it contains Highly Confidential Information as defined above.

7. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this Second Protective Order shall use the information solely for the purpose of verifying compliance with the conditions of the Order and for the preparation and prosecution of any administrative proceeding before the Commission as delineated in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding, and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this Second Protective Order.

8. *Non-Disclosure of Stamped Highly Confidential Information.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Second Protective Order, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed further.

9. *Permissible Disclosure.* Subject to the requirements of paragraph 12, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not described in clause 2 of this paragraph assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Outside Counsel of the Submitting Party.

10. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* Persons described in paragraph 12 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this Second Protective Order. Such persons shall further have the obligation to ensure that Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this Second Protective Order.

11. *Copying Sensitive Documents.* Any Stamped Highly Confidential Document may be marked with the legend "Additional Copying Prohibited." A Reviewing Party shall receive only one copy of the document and no further copies of such document, in any form, shall be made, subject to the provisions for access to information in electronic format in paragraph 13. Application for relief from this restriction

against further copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

12. *Procedures for Obtaining Access to Highly Confidential Documents:*

a. In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 9, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute an Acknowledgment and file it with the Media Bureau, on behalf of the Commission, and serve it upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information, except that, where the person seeking access is one described in either clause 2 or 3 of paragraph 9, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 2 or 3 of paragraph 9, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information.

b. The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's in-house counsel; *provided, however*, that the Applicants may make available for review all of their Stamped Highly Confidential Documents at the offices of one Applicant's Outside Counsel of Record (the "Applicants' Custodian Counsel"). Parties reviewing these documents will be provided the following alternatives: (1) parties will be provided adequate opportunity to inspect the documents on site; (2) parties may inspect the documents on site with the ability to request copies, at cost, of all or some of the documents; or (3) parties may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a complete set of documents will be requested, parties are encouraged to make such requests at the time they submit the Acknowledgment to allow parties the opportunity to begin reviewing the documents at the end of the five-day period referred to above. All copies of documents that are removed from the Submitting Party's office will be stamped as described herein and must be returned or destroyed in accordance with the terms of this Second Protective Order.

13. *Highly Confidential Information in Electronic Format.* If a party's Outside Counsel or Outside Consultant has been granted access to Stamped Highly Confidential Documents and Highly Confidential Information pursuant to paragraphs 9 and 12, that Outside Counsel or Outside Consultant may request one copy of information contained, recorded, or electronically stored on a CD-ROM, DVD, flash drive, portable hard drive or similar electronic storage device. The disk or other medium containing Highly Confidential Information in electronic format shall be physically sent to the Outside Counsel or Outside Consultant; it shall not be transmitted electronically.

a. A person in receipt of Highly Confidential Information in electronic format shall load the information onto a computer solely for the purpose of analysis in connection with this proceeding and for no other purpose. The original disk or other storage medium shall be stored in a secure location and a record kept of any persons given access to the disk. Only persons who have signed the Acknowledgement to this Second Protective Order may be given access to the disk.

b. Once loaded onto a computer, the files containing Highly Confidential Information shall be password protected immediately. The password shall be given only to persons who have signed the Acknowledgement to this Order. The Highly Confidential Information may not be stored on a computer after being analyzed. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the underlying Highly Confidential Information) to a mobile data storage medium. All files containing Highly Confidential Information shall be deleted from the computer as soon as practicable.

14. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this Second Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

15. *Filings with the Commission.* Persons described in paragraphs 9 and 12 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedures:

a. The cover or first page of the filing, and each page of the filing that contains or discloses Highly Confidential Information subject to this order must be clearly marked: "Highly Confidential Information – Subject to Protective Order in MB Docket No. 10-56 before the Federal Communications Commission."

b. One copy of the filing shall be filed with the Secretary's Office. The filing shall be accompanied by a cover letter stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER FOR COMPLIANCE IN MB DOCKET NO. 10-56 before the Federal Communications Commission." The filing shall be made under seal, and will not be placed in the Commission's public file.

c. Those portions of the filing that constitute Highly Confidential Information shall be clearly identifiable as such, so that those portions that are deemed to be Highly Confidential Information are readily identifiable based on an examination of the filing. Moreover, the portions of the filing that constitute Confidential Information, if any, shall also be clearly identifiable as such, so that those portions claimed to be Confidential are readily distinguishable from those portions claimed to be Highly Confidential Information, based on an examination of the filing.

d. Two redacted copies of the filing containing neither Highly Confidential Information nor Confidential Information (the "Redacted Confidential Filing") shall also be filed with the Secretary's Office. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. The two copies of the Redacted Confidential Filing and their accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the Submitting Party is filing a redacted version of the filing.

e. Two copies of the filing containing Highly Confidential Information and the accompanying cover letter shall be delivered in person to Vanessa Lemmé, Industry Analysis Division,

Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. In addition, a person making a filing containing Highly Confidential Information shall serve a copy on the relevant Submitting Party.

f. Parties shall not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Media Bureau so requests. Any courtesy copies shall be submitted under seal.

16. *Client Consultation.* Nothing in this Order shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Highly Confidential Documents or Highly Confidential Information; *provided, however,* that in rendering such advice and otherwise communicating with such client, Outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

17. *No Waiver of Confidentiality.* Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

18. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this Second Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Documents or Highly Confidential Information.

19. *Violations of Protective Order.* Should a person that has properly obtained access to Highly Confidential Information under this Second Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Second Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this Second Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this Second Protective Order.

20. *Termination of Proceeding.* The provisions of this Protective Order shall terminate upon the expiry of all of the conditions in the Order. If a Reviewing Party does not commence or participate in an administrative or judicial proceeding relating to the Stamped Highly Confidential Documents within 60 days of receiving access to them, such Reviewing Party shall destroy or return to the Submitting Party all Stamped Highly Confidential Documents and all copies of the same. In addition, within two weeks after conclusion any administrative or judicial review (including time for reconsideration or appeal), persons described by paragraph 9 shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly

Confidential Documents may be retained by any person having access thereto, except Counsel may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Highly Confidential Information prepared in whole or in part by that party, and one copy of orders issued by the Commission or Bureau containing Highly Confidential Information. All Counsel shall make certification of compliance herewith and shall deliver the same to Counsel for the Submitting Party not more than three weeks after the Stamped Highly Confidential Documents have been destroyed or returned pursuant to the terms of this paragraph 20. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

21. *Authority.* This Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

APPENDIX A

Acknowledgment of Confidentiality

MB Docket No. 10-56

I hereby acknowledge that I have received and read a copy of the foregoing Second Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Second Protective Order and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by the Second Protective Order. I acknowledge that a violation of the Second Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Second Protective Order is due solely to my capacity as Outside Counsel or Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 12 of the foregoing Second Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Second Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the Second Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Second Protective Order, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Second Protective Order.

Executed at _____ this ____ day of _____, ____.

[Name]
[Position]
[Address]
[Telephone]