

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 and
Transfer Control of Licensees
MB Docket No. 10-56

Order

Adopted: March 7, 2013

Released: March 7, 2013

By the Chief, Media Bureau:

I. INTRODUCTION

1. On December 4, 2012, the Media Bureau ("Bureau") issued an Order (the "Benchmark Condition Order") in the above-captioned proceeding clarifying that Online Video Distributors ("OVDs") that invoke the "Benchmark Condition" contained in the Comcast-NBC Universal Order are required to disclose the terms of comparable peer programming agreements to outside experts and outside counsel of Comcast Corporation and NBC Universal Media, LLC ("C-NBCU") in accordance with the Third Protective Order for Compliance ("Third Protective Order").

2. On December 18, 2012, CBS Corporation, News Corporation, Sony Pictures Entertainment Inc., Time Warner Inc., Viacom Inc. and The Walt Disney Company (collectively, the "Content Companies") filed a request for stay of the Benchmark Condition Order. Public Knowledge subsequently filed a request for stay supporting the Content Companies' request. C-NBCU filed an opposition to the stay requests on December 26, 2012. The Content Companies also filed an application for review of the Benchmark Condition Order on January 3, 2013, in which they argue, in part, that the

1 Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, Order, MB Docket No. 10-56, 27 FCC Red 15053 (MB 2012) ("Benchmark Condition Order").

2 Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, Memorandum Opinion and Order, MB Docket No. 10-56, 26 FCC Red 4238, 4360, App. A., § IV, A.2.b (2011).

3 Benchmark Condition Order at ¶ 2, App. A.

4 Content Companies, Request for Stay of Media Bureau Order DA 12-1950, MB Docket No. 10-56 (December 18, 2012).

5 Public Knowledge, Request for Stay of Media Bureau Order DA 12-1950, MB Docket No. 10-56 (December 19, 2012).

6 C-NBCU, Opposition of Comcast Corporation and NBCUniversal Media, LLC to Content Companies' Request for Stay, MB Docket No. 10-56 (December 26, 2012).

Commission should reverse the Order because it constitutes an improper grant of an untimely petition for reconsideration by C-NBCU and unlawfully requires the disclosure of the peer programming agreements that serve as the basis for an OVD's request for programming under the Benchmark Condition.<sup>7</sup> The Content Companies further argue that the Commission should have reviewed C-NBCU's request for clarification of the Benchmark Condition in the first instance and that the Bureau, by issuing the *Benchmark Condition Order*, exceeded its delegated authority.<sup>8</sup> In addition, the Content Companies claim that the *Comcast-NBC Universal Order* did not anticipate the potential disclosure of the confidential material contained in peer agreements until a dispute was before an arbitrator and that the Bureau improperly modified the merger order so that disclosure may occur earlier in the negotiation process. The Content Companies argue that this modification will result in more disclosures of third party agreements and will give C-NBCU a competitive advantage vis-à-vis the Content Companies.<sup>9</sup>

3. C-NBCU filed an opposition to the application for review on January 18, 2013, and the Content Companies filed a reply to the opposition on January 28, 2013.<sup>10</sup> In its opposition, C-NBCU argues that it is "self-evident" that it cannot comply with the mandate of the Benchmark Condition without appropriate access to peer agreements.<sup>11</sup> C-NBCU further argues that the Content Companies' concerns arise from the Commission's decision to adopt the Benchmark Condition in the first place, not from the Bureau's *Benchmark Condition Order*, which simply "fleshes out a necessary process for [the condition] to work."<sup>12</sup> C-NBCU also claims that disclosure will facilitate negotiated agreements, enable OVDs to gain access to C-NBCU programming more efficiently, and provide a means for C-NBCU and an OVD to avoid arbitration whenever an OVD triggers the Benchmark Condition.<sup>13</sup>

4. The Content Companies raise significant issues, and we believe that the public interest will be best served by staying the *Benchmark Condition Order* to allow the Commission an opportunity to address those issues. Even if the Commission finds that the *Comcast-NBC Universal Order* implicitly requires disclosure, as the Bureau concluded, the Commission could modify the Benchmark Condition if it determines that the public interest so requires.<sup>14</sup> Because an OVD may seek programming under the Benchmark Condition at any time, staying the implementation of the *Benchmark Condition Order* will avoid potential confusion in the event that the Commission determines that disclosure of third-party agreements either is not required by the *Comcast-NBC Universal Order* or is not in the public interest, or that the terms of disclosure should be modified. Accordingly, the Bureau concludes that grant of a stay is equitable and will serve the public interest.<sup>15</sup>

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<sup>7</sup> Content Companies, Application for Review of Media Bureau Order DA 12-1950, MB Docket No. 10-56 (January 3, 2013) ("Content Companies' Application for Review").

<sup>8</sup> *Id.* at 15; *see also* Letter from David P. Murray, Counsel for C-NBCU, to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 10-56 (February 17, 2012).

<sup>9</sup> Content Companies' Application for Review at 6-7, 10.

<sup>10</sup> C-NBCU, Opposition of Comcast Corporation and NBCUniversal Media, LLC to Content Companies' Application for Review, MB Docket No. 10-56 (January 18, 2013) ("C-NBCU Opposition to Application for Review"); Content Companies, Reply to Opposition of Comcast Corporation and NBCUniversal Media, LLC, MB Docket No. 10-56 (January 28, 2013).

<sup>11</sup> C-NBCU Opposition to Application for Review at 1; *see also id.* at 4-5.

<sup>12</sup> *See id.* at 7, 11.

<sup>13</sup> *Id.* at 7, 10.

<sup>14</sup> *Comcast-NBC Universal Order*, 26 FCC Rcd at 4253, ¶ 286 (the conditions shall apply "until the Commission determines that [they] should be modified or removed").

<sup>15</sup> *See Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, 27 FCC Rcd 5613, 5615 (2012) ("*Tennis Channel*"); *Policies & Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 11 FCC (continued....)

5. Therefore, on its own motion, the Bureau takes this action staying the *Benchmark Condition Order* until the Commission has the opportunity to consider the Content Companies' Application for Review.<sup>16</sup> Accordingly, we dismiss the Content Companies' and Public Knowledge's Requests for Stay and C-NBCU's Opposition as moot.<sup>17</sup>

## II. ORDERING CLAUSE

6. Accordingly, having reviewed the request and the record in this proceeding, **IT IS ORDERED**, 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), and authority delegated under Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283, the effectiveness of the *Benchmark Condition Order* **IS STAYED** pending Commission review.

7. **IT IS FURTHER ORDERED** that the Requests for Stay filed by the Content Companies and Public Knowledge, and C-NBCU's Opposition to the Content Companies' Request for Stay, **ARE DISMISSED** as moot.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

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Rcd 856, 857 (1995) ("*Long Distance Carriers*"); *In the Matter of Bloomberg L.P., Complainant*, 27 FCC Rcd 9488, 9492 (MB 2012) ("*Bloomberg*").

<sup>16</sup> See *Tennis Channel*, 27 FCC Rcd at 5615, ¶ 5; *Long Distance Carriers*, 11 FCC Rcd at 857; *Bloomberg*, 27 FCC Rcd 9488; *Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, 27 FCC Rcd 4931, 4932 (OGC 2012); *AT&T Services, Inc. & S. New England Tel. Co. d/b/a AT&T Connecticut*, 26 FCC Rcd 14293 (MB 2011); *Verizon Tel. Companies & Verizon Services Corp.*, 26 FCC Rcd 14295 (MB 2011) ("*Verizon*"). Our grant of this administrative stay does not prejudice any future findings the Commission might make if any party seeks a judicial stay of the Commission's order on review. For example, in ruling on a stay application following a thorough review of the merits of the Application for Review, the Commission may assess the public interest differently from our analysis at this preliminary stage of the administrative proceedings.

<sup>17</sup> See *Tennis Channel*, 27 FCC Rcd at 5615 at n.25; *AT&T*, 26 FCC Rcd at 14293 & n.7; *Verizon*, 26 FCC Rcd at 14295 & n.7.