

## REQUEST FOR INFORMATION ISSUED TO THE WALT DISNEY COMPANY

1. Identify and list each agreement between (a) the Company and an Applicant, or (b) the Company and the Announced OVD Services, relating to the licensing of the Company's Video Programming that has been effective at any time during the period beginning January 18, 2011, through the date of this Request.

2. Identify any provision in each agreement listed in response to Specification 1(a) that limits or reduces the Company's incentive or ability to:

a. license its Video Programming to an OVD (including an Announced OVD Service) or to offer Video Programming directly to consumers via the Internet, including, but not limited to, any economic or non-economic Most-Favored-Nations obligations, provisions relating to exclusive distribution or further distribution by another Person or through the use of windows, limits on distribution on a specific platform (e.g. Cable System, via the Internet), limits on the Applicant's subscribers' ability to view the Company's Video Programming through an authentication process or on a particular device, limits on the number of promotions, stunts or clips that the Company can distribute, and limits on the number of Video Programming networks that can be aggregated on a single website or single application; and

b. sell advertising for, or otherwise monetize its Video Programming through distribution to an OVD or by the Company offering its Video Programming via the Internet directly to consumers.

3. Describe each provision identified in response to Specification 2, and describe:

a. the negotiation of the provision;

b. the events or acts that trigger the application of the provision, and the acts taken or the restriction imposed when the provision is triggered or otherwise becomes effective;

c. the efforts taken by the relevant Applicant, if any, to enforce the provision, including but not limited to discussions between the Company and the Applicant about the enforcement of the provision, the Company's response thereto and the results of those efforts; and

d. whether similar provisions exist in the Company's agreements with other MVPDs.

4. Describe all provisions relating to restrictions or limitations on distribution of the Company's Video Programming, including but not limited to windowing, device approval, and authentication that were proposed by an Applicant during negotiations that the Company successfully sought to exclude from the Video Programming distribution agreement it ultimately entered into with the Applicant, and the reason given by the Applicant for the provision.

5. Describe all oral and written communications relating to any statement by Comcast that the provisions identified in response to Specification 2 were either no longer effective or would not be enforced as a result of the Comcast-NBCU Order or the Final Judgment entered in U.S. v. Comcast Corp. and NBC Universal, Inc., Civ. Action No. 1:11-cv-00106 (D.D.C. 2011).

6. If an action by the Company triggered any of the Most-Favored-Nations provisions identified in response to Specification 2, identify the provision and describe the acts taken by the Company to comply with the requirements of the provision, and the Applicant's response thereto.

7. For each provision identified in response to Specification 2 that prevented, affected or limited the nature or scope of the license for Video Programming that the Company entered, was willing to enter, or was able to enter with the Announced OVDs, identify the provision and describe in detail how the provision influenced the Company's licensing decision. Describe all communications between the Company and the relevant Applicant relating to negotiation of any agreement listed in response to Specification 1(b), including, but not limited to, negotiations to modify the impact of any provision identified in response to this Specification on the Company's ability to license the Video Programming covered by the provision to an Announced OVD, and the results of those discussions.

8. Identify each provision identified in response to Specification 2 that could inhibit the Company's ability to license its Video Programming to an OVD which proposes to employ new or different business models than those that have been offered to consumers to date, and describe the provision's effect and impact on the Company's licensing practices.

9. Describe any efforts or actions, not otherwise described, that relate to the use or potential use of current or prospective Video Programming agreements or negotiations between the Company and an Applicant, in a manner that would limit the ability of the Company to provide its Video Programming to an MVPD, OVD or by the Company directly to consumers.

10. For any OVD service that the Company has considered, plans to provide, or provides:

a. describe each provision identified in response to Specification 2 that influenced the Company's decision to launch, or not launch, such service, or limited the nature or scope of the OVD service that the Company was willing to or able to launch, and describe in detail how the provisions influenced the Company's decision-making;

b. describe any discussions concerning such current or prospective agreements or negotiations with the Applicants about the provisions identified in this subpart a of this Specification relating to such OVD service; and

c. if the Company has launched such service, describe any reaction by the Applicants to the service and any discussions with the Applicants about such service to the

extent they concern the existence or prospective creation of Video Programming agreements or negotiations.

11. Identify and describe the Applicants' obligations, and limits thereon, contained in the agreements listed in response to Specification 1(a) to provide the Company the metrics and data relating to views of the Company's Video Programming by the Applicants' subscribers, and describe how the information received pursuant to the provision impacts the Company's ability to effectively monetize its Video Programming and sell advertising.

12. With respect to each provision identified in response to Specification 2, describe any consideration or other benefit that was either offered by an Applicant or accepted by the Company in exchange for the Company's agreement to include the provision in the agreement.

13. Describe any material differences among the Company's agreements with each of the Applicants, including differences among any provisions identified in response to Specification 2, and whether the terms of any one Applicant's agreements with the Company, taken in the aggregate, could be characterized as more favorable to the relevant Applicant than the Company's affiliation agreements with other Applicants.

14. Describe all communications between the Company and the Applicants related to the negotiation of any agreement listed in response to Specification 1(a) that discuss:

a. the importance to the Company of reaching a minimum level of penetration for the Company's Video Programming;

b. the importance to the Company of being carried on a particular programming tier;

c. the need to obtain carriage for the Company's Video Programming from another MVPD prior to obtaining carriage from the relevant Applicant; and

d. the importance of achieving distribution for the Company's Video Programming in any specific geographic markets, including, but not limited to, any discussions related to the Company's ability to reach a critical mass of subscribers to launch a new network, attract national or regional advertisers, maintain long-term viability, or compete effectively with other video programmers.

15. Describe in detail all provisions identified in response to Specification 2 and related efforts, negotiations and acts by Comcast to alter the nature or scope of the services provided by Hulu LLC to consumers, and the impacts these negotiations, efforts and acts have had on Hulu's services.

### **Definitions**

The following definitions apply only to this Information Request. They are not intended to set or modify precedent outside the context of this document. In this Information Request, the

following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

1. The term “Company” means The Walt Disney Company and its Subsidiaries.
2. The term “Applicants” means Comcast, Charter and TWC.
3. The terms “and” and “or” have both conjunctive and disjunctive meanings.
4. The term “Announced OVD Services” means the Video Programming distribution services announced by CBS Corporation, DISH Network Corporation, Intel Corporation, Scripps Networks Interactive Inc. Sony Corporation, Time Warner Inc. and Verizon Communications Inc.
5. The word “any” shall be construed to include the word “all,” and the word “all” shall be construed to include the word “any.” The word “each” shall be construed to include the word “every,” and the word “every” shall be construed to include the word “each.” All words used in the singular should be construed to include the plural, and all words used in the plural should be construed to include the singular.
6. The term “Broadcast Programming Network” means without limitation network Video Programming delivered simultaneously to two or more Broadcast Television Stations.
7. The term “Broadcast Television Station” means a station in the television broadcast band transmitting simultaneous visual and aural signals intended to be received by the public.
8. The term “Cable System” means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes Video Programming and which is provided to multiple subscribers within a community, as defined in Section 76.5 of the Commission’s rules.
9. The term “Charter” means Charter Communications Inc., and its Subsidiaries.
10. The term “Comcast” means Comcast Corporation and its Subsidiaries.
11. The term “Comcast-NBCU Order” means the Application of Comcast Corp., General Electric Co., and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, 26 FCC Rec 4238 (2011).
12. The term “describe” when used with reference to a provision in an agreement means, in addition to providing the description requested in the Specification, to state the scope of the Video Programming covered by the provision, including but not limited to the type of content (e.g. Broadcast Programming Network or cable network and current content or library content), the type of distribution (linear stream, VOD or other) and the relevant platform (Cable System or Online).

13. The term “identify,” when used with reference to an agreement, means to state the date, the parties thereto, and the type of agreement (e.g., contract, letter agreement, amendment), and a brief description of the subject matter. “Identify,” when used with reference to an entity other than a Person, means to state its name, current or last known business address, and current or last known business telephone number. The term “identify” when used with reference to a provision within an agreement, means to identify the agreement containing the provision, and state the section number, the paragraph number and the page number where the provision appears in the agreement.

14. The term “Multichannel Video Programming Distributor” or “MVPD” means an entity, including but not limited to, a cable operator, which is engaged in the business of making available for purchase, by subscribers or customers, multiple channels of Video Programming.

15. The term “Online Video Distributor” or “OVD” means any entity that provides Video Programming by means of the Internet or other IP-based transmission path provided at least in part by a person other than the OVD.

16. The term “Pay Per View” or “PPV” means a service that allows MVPD subscribers, for an additional fee, to order individual programs, generally live event programming.

17. The term “Person” includes the Company, and means any individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

18. The term “relating to” means in the whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

19. The term “Subsidiary” as to any Person means any corporation, partnership, joint venture, limited liability company, or other entity of which shares of stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership, joint venture, limited liability company or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person.

20. The term “Time Warner Cable” or “TWC” means Time Warner Cable Inc. and its Subsidiaries.

21. The term “Video-on-Demand” or “VOD” means a service which allows subscribers to MVPD Service to view individual programs at the time of their choosing including, but not limited to, motion pictures, professional video, Broadcast Programming Networks, or Non-Broadcast Programming Networks. VOD includes without limitation both free programs and programs for which there is a charge.

22. The term “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station or cable network, regardless of the medium or method used for distribution, and includes but is not limited to: programming prescheduled by the programming provider (also known as scheduled programming or a linear feed); programming offered to viewers on an on-demand, point-to-point basis (also known as VOD or PPV); short programming segments (also known as clips); programming that includes multiple video sources (also known as feeds, including camera angles); programming that includes video in different qualities or formats (including high-definition, 3D and 4K); and films.

### **Instructions**

1. Unless otherwise specified, all Information Requests cover the period from January 18, 2011, through the date of this Request.

2. Submit responses to Information Requests in both paper and electronic form, unless an electronic form is specified (e.g., electronic spreadsheet).

3. For each statement submitted in response to the Requests, indicate, by number and subsection, the Request to which it is responsive.

4. Provide a glossary of industry and company terminology.

5. The specific Requests made herein are continuing in nature. The Company is required to produce in the future any and all information that is responsive to the Requests made herein but not initially produced at the time, date, and place specified herein. In this regard, the Company must supplement its responses (a) if the Company learns that, in some material respect, the information initially disclosed were incomplete or incorrect or (b) if additional responsive information are acquired by or become known to the Company after the initial production.

6. Any information or communication that is withheld in whole or in part from production based on a claim of privilege shall be assigned a control number and noted in the Company’s privilege log.

7. For each control number on the Company privilege log:

- a. Provide the control number(s);
- b. Identify all authors of the information or participants in the communication;
- c. Identify all recipients of the information;
- d. Provide the date of the information or communication;
- e. Provide a description of the subject matter of the information or communication;
- f. State the nature or type of the privilege that the Company is asserting for the information or communication (e.g., “attorney-client privilege”); and
- g. Provide the number(s) of the Request to which the information or communication is responsive.

8. The Company's privilege log shall also conform with all of the following requirements:

- a. Provide a separate legend identifying each author, addressee, and participant identified on the Company's privilege log;
- b. Identify on the privilege log, and denote with an asterisk, all attorneys acting in a legal capacity with respect to the withheld information or communication;
- c. The description of the subject matter of the information or each communication shall describe the nature of thereof in a manner that, though not revealing information that is itself privileged, provides sufficiently detailed information to enable the Commission to assess the applicability of the privilege claimed;
- d. Produce all nonprivileged portions of any responsive information or communication for which a claim of privilege is asserted;
- e. The privilege log shall be produced in both hardcopy and electronic form, the electronic form of which shall be both searchable and sortable; and
- g. Information and communications transmitted solely between counsel, including in-house counsel acting solely in a legal capacity, and information authored by the Company's outside counsel that were not directly or indirectly furnished to any third party, such as internal law firm memoranda, may be omitted from the privilege log.