

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

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



**OPPOSITION TO JOINT OBJECTION TO DISCLOSURE  
OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION**

The American Cable Association (“ACA”) files this Opposition to the Joint Objection to Disclosure of Confidential and Highly Confidential Information filed by Comcast Corporation, General Electric Company, and NBC Universal, Inc. (collectively, “Applicants”).<sup>1</sup>

**I. Applicants’ Joint Objection to Disclosure of Confidential Information Pursuant to the First Protective Order as to Ross J. Lieberman, ACA Vice President of Government Affairs**

In their Joint Objection, Applicants assert that ACA Vice President of Government Affairs, Ross J. Lieberman, “has not made the requisite showing that he qualifies as ACA’s In-House Counsel,” because “[i]t is unclear whether or not Mr. Lieberman...functions as an attorney-advisor with respect to [ACA].”<sup>2</sup> However, Applicants state that “should Mr. Lieberman establish that he is In-House counsel within

---

<sup>1</sup> *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses*, Comcast Corporation, General Electric Company, and NBC Universal, Inc., Joint Objection to Disclosure of Confidential and Highly Confidential Information, MB Docket No. 10-56 (filed Mar. 25, 2010) (“*Joint Objection*”).

<sup>2</sup> *Joint Objection* at 5.

the meaning of the First Protective Order, Applicants will withdraw their objection to Mr. Lieberman's access to Confidential Materials."<sup>3</sup>

ACA files this Response to show that Mr. Lieberman meets the definition of "In-House Counsel" as defined in the First Protective Order.<sup>4</sup> The First Protective Order defines "In-House Counsel" as follows:

[A]n attorney employed by a party to this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, *provided that*, such counsel is not involved in competitive decision-making, *i.e.*, In-House Counsel's activities, association, and relationship with a client are not such as to involve such counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor....<sup>5</sup>

Mr. Lieberman is an attorney licensed in the District of Columbia, is employed by a party to this proceeding (*i.e.*, ACA), and is (and will be) actively engaged in the conduct of this proceeding on behalf of ACA. Moreover, Mr. Lieberman is ***not involved in competitive decision-making***.<sup>6</sup>

The courts have held that "competitive decision-making" involves decisions "that affect contracts, marketing, employment, pricing, product design," and other decisions made in light of similar corresponding information about a competitor.<sup>7</sup> Mr. Lieberman has been actively engaged in the Comcast-NBCU transaction on behalf of ACA, and will

---

<sup>3</sup> *Joint Objection* at 5.

<sup>4</sup> *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses*, Protective Order, MB Docket No. 10-56, DA 10-370 ("First Protective Order").

<sup>5</sup> *First Protective Order* at 2 (emphasis in original).

<sup>6</sup> See Declaration of Ross J. Lieberman, attached hereto as Exhibit 1.

<sup>7</sup> *Volvo Penta of the Americas, Inc. v. Brunswick Corp.*, 187 F.R.D. 240, 242 (E.D.Va. 1999); see also *Glaxo Inc. v. Genpharm Pharm., Inc.*, 796 F.Supp. 872, 874 (E.D.N.C. 1992) (improper to prevent in-house counsel from accessing confidential information because he gave no advice to his client about competitive decisions such as pricing, scientific research, sales, or marketing); *Matsushita Elec. Indus. Co. v. U.S.*, 929 F.2d 1577, 1579-80 (Fed.Cir. 1991) (determination by agency forbidding access was arbitrary when lawyer precluded from access testified that he was not involved in pricing, technical design, selection of vendors, purchasing, marketing, and strategic decisions).

continue to be the primary point person leading ACA's efforts on the Applicants' merger at the Commission, United States Department of Justice, and various state attorneys general offices. Mr. Lieberman's duties and responsibilities meet the First Protective Order's definition of "In-House Counsel," and Mr. Lieberman should be allowed access to Applicants' Confidential Information.

Based on the foregoing, ACA respectfully requests that the Commission deny the Applicants' objection and permit Mr. Lieberman access to Applicants' Confidential Information that is the subject of the First Protective Order.

## **II. Applicants' Joint Objection to Disclosure of Highly Confidential Information Pursuant to the Second Protective Order as to Ross J. Lieberman, ACA Vice President of Government Affairs**

Applicants further object to Mr. Lieberman's access to the Highly Confidential Information that is the subject of the Second Protective Order.<sup>8</sup> Applicants assert that Mr. Lieberman is not "Outside Counsel within the meaning of the [First and Second] Protective Orders."<sup>9</sup>

Contrary to Applicants' assertion, Mr. Lieberman does meet the definition of "Outside Counsel" for purposes of the Second Protective Order. The Second Protective Order defines "Outside Counsel of Record" and "Outside Counsel" as follows:

"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***

---

<sup>8</sup> *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses*, Protective Order, MB Docket No. 10-56, DA 10-371 ("Second Protective Order").

<sup>9</sup> *Joint Objection* at 3.

***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.***<sup>10</sup>

Mr. Lieberman – a licensed attorney – is the Vice President of Government Affairs at ACA. ACA, based in Pittsburgh, Pennsylvania, is a private non-profit membership corporation (*i.e.*, trade association) whose primary objective and emphasis is to advocate for the interests of its approximately 900 small and medium-sized independent cable operators throughout the country before Congress and federal agencies. As such, ACA is a ***non-commercial*** party in this proceeding. Moreover, Mr. Lieberman is not involved in the competitive decision-making activities of any competitor of a Submitting Party. Contrary to the assertion made by Applicants, Mr. Lieberman ***does*** meet the definition of Outside Counsel of Record for purposes of the Second Protective Order.

ACA respectfully requests that the Commission deny the Applicants' objection and permit Mr. Lieberman access to Applicants' Highly Confidential Information that is the subject of the Second Protective Order.

**III. Applicants' Joint Objection to Disclosure of Confidential and Highly Confidential Information Pursuant to the First and Second Protective Orders as to Matthew M. Polka, ACA President and Chief Executive Officer**

ACA hereby withdraws ***without prejudice*** its requests for disclosure of Confidential and Highly Confidential Information pursuant to the First Protective Order and Second Protective Order, respectively, as to Matthew M. Polka, ACA President and Chief Executive Officer. In withdrawing these requests, ACA does not concede that Mr. Polka fails to qualify as a person entitled to disclosure of such information pursuant to the First and Second Protective Orders. Should ACA file new requests for disclosure

---

<sup>10</sup> *Second Protective Order* at 3 (emphasis added).

pursuant to either, or both, of the Protective Orders, it will respond substantively to the arguments in opposition to Mr. Polka's access to the Confidential and Highly Confidential Information set forth by the Applicants in their Joint Objection.

#### **IV. Conclusion**

For the foregoing reasons, ACA respectfully requests that the Commission deny Applicants' Joint Objection to Disclosure of Confidential and Highly Confidential Information as to Ross J. Lieberman, and promptly grant Mr. Lieberman access to the confidential information that is the subject of the First and Second Protective Orders.

Respectfully submitted,



By: \_\_\_\_\_

Jeremy M. Kissel  
Cinnamon Mueller  
307 North Michigan Avenue  
Suite 1020  
Chicago, Illinois 60601  
(312) 372-3930

Attorneys for the American Cable  
Association

April 2, 2010

# **EXHIBIT 1**

Declaration of Ross J. Lieberman

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

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

**DECLARATION OF ROSS J. LIEBERMAN**

1. My name is Ross J. Lieberman. I serve as Vice President of Government Affairs for the American Cable Association ("ACA"). I have held this position since June of 2007.
2. The American Cable Association, based in Pittsburgh, Pennsylvania is a private non-profit membership corporation (i.e. trade association) whose primary objective and emphasis is to advocate for the interests of its approximately 900 small and medium-sized independent cable operators throughout the country before Congress and federal agencies.
3. My business address is 2415 39<sup>th</sup> PI, NW, Washington, DC 20007.
4. I am licensed to practice law in the District of Columbia.
5. I am the association's senior advocate on Capitol Hill and at the federal agencies, including the Federal Communications Commission ("FCC"). My responsibilities include assisting in the development and implementation of all legislative and regulatory efforts on matters that impact ACA's membership.
6. I report only to ACA President and CEO Matthew M. Polka, and not to the association's board of directors, nor any of the association's individual cable operators or cable vendors who are members.
7. In addition to my legislative duties, I oversee the day-to-day management of all regulatory matters for the trade association, which includes the development of policy positions, the preparation of filings, and representing the association before the federal agencies, including the FCC.
8. I am actively engaged in the conduct of the Applicants' proceeding at the United States Department of Justice, the Federal Communications Commission, and at various state attorneys general offices.
9. I am not involved in competitive decision-making for any ACA member that is a competitor of Comcast Corporation, General Electric Company, or NBC Universal, Inc. My interaction with ACA's membership is limited to discussions related to legislative and regulatory issues.

I, Ross J. Lieberman, hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.



\_\_\_\_\_  
Ross J. Lieberman  
Vice President of Government Affairs  
American Cable Association

Executed this 2<sup>nd</sup> day of April, 2010.

## Certificate of Service

I, Alma Hoxha, paralegal with the law firm of Cinnamon Mueller, hereby certify that copies of the foregoing **Opposition to Joint Objection to Disclosure of Confidential and Highly Confidential Information** were served via USPS mail on this 2nd day of April, 2010 to the following:

Michael H. Hammer  
James L. Casserly  
Michael D. Hurwitz  
Brien C. Bell  
Willkie Farr & Gallagher LLP  
1875 K. Street, N.W.  
Washington, DC 20006

Pantelis Michalopoulos  
Christopher Bjornson  
Counsel for DISH Network Corp.  
Steptoe & Johnson LLP  
1330 Connecticut Ave., NW  
Washington DC 20036-1795

A. Richard Metzger, Jr.  
Regina M. Keeney  
Lawler, Metzger, Keeney & Logan, LLC  
2001 K. Street, NW Suite 802  
Washington, DC 20006

Jessica Almond  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 3-C828  
Washington, D.C. 20554

Arthur J. Burke  
Ronan P. Harty  
Rahesh James  
Davis Polk & Wardwell LLP  
450 Lexington Ave  
New York, NY 10017

Marcia Glauberman  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 2-C264  
Washington, D.C. 20554

Bryan N. Tramont  
Kenneth E. Satten  
David H. Solomon  
Natalie G. Roisman  
Wilkinson Barker Knauer, LLP  
2300 N. Street, NW, Suite 700  
Washington, DC 20037

Kevin Martin  
Stephen Diaz Gavin  
Rory Adams  
Stephen M. Axinn  
Patton Boggs LLP  
2550 M Street, NW  
Washington, DC 20037

William M. Wiltshire  
Wiltshire & Grannis LLP  
1200 18<sup>th</sup> Street, NW Suite 1200  
Washington, DC 20036

Vanessa Lemme  
Industry Analysis Division, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 2-C313  
Washington, D.C. 20554

William D. Freedman  
Associate Bureau Chief  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

  
Alma Hoxha  
Paralegal