

**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)
)
)



**RESPONSE TO APPLICANTS' REPLY TO AMERICAN CABLE
ASSOCIATION'S OPPOSITION TO JOINT OBJECTION TO DISCLOSURE OF
CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION**

The American Cable Association (“ACA”) files this Response to Comcast Corporation, General Electric Company, and NBC Universal, Inc.’s (collectively, “Applicants”) Reply to ACA’s Opposition to Applicants’ Joint Objection to Disclosure of Confidential and Highly Confidential Information.¹

I. 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.

ACA responds to the only remaining issue raised by Applicants in their Reply – ACA Vice President of Government Affairs Ross J. Lieberman’s access to Applicants’ Highly Confidential Information.

¹ *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.’s Reply to American Cable Association’s Opposition to Joint Objection to Disclosure of Confidential and Highly Confidential Information, MB Docket No. 10-56 (filed Apr. 7, 2010) (“Reply”).

While Applicants concede that the Second Protective Order² includes “an exception for attorneys representing non-commercial parties,”³ Applicants continue to argue that Mr. Lieberman should be denied access to Highly Confidential Information because he “is not sufficiently removed from ACA members’ competitive decision-making processes....”⁴ Applicants state that, “[a]s part of [Mr. Lieberman’s] advocacy, **it is likely** that Mr. Lieberman discusses sensitive competitive issues with the members on whose behalf he advocates.”⁵

The Second Protective Order is clear: “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.**”⁶ Mr. Lieberman has executed a sworn Declaration that unequivocally states that he is **not** involved in the competitive decision-making for any ACA member company that is a competitor to Comcast Corporation, General Electric Company, or NBC Universal, Inc.⁷ Applicants do not present any evidence to the contrary in their Reply. In an effort to remove all doubt, ACA is filing a separate sworn Declaration by ACA President and Chief Executive Officer Matthew M. Polka stating that Mr. Lieberman is not involved in the competitive

² *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses*, Second Protective Order, MB Docket No. 10-56, DA 10-371 (rel. Mar. 4, 2010) (“*Second Protective Order*”).

³ Reply at 2; *Second Protective Order* at 3 ¶ 5.

⁴ Reply at 3.

⁵ *Id.* (emphasis added).

⁶ *Second Protective Order* at 3 ¶ 5 (emphasis added).

⁷ See *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses*, American Cable Association’s Opposition to Joint Objection to Disclosure of Confidential and Highly Confidential Information, MB Docket No. 10-56, Declaration of Ross J. Lieberman, Exhibit 1 ¶ 9 (filed Apr. 2, 2010).

decision-making for any ACA member company.⁸

Moreover, Applicants' assertion that allowing Mr. Lieberman access to Highly Confidential Information would "create a significant risk that Applicants' most sensitive information could be used to cause Applicants competitive harm"⁹ is groundless. Like all other individuals seeking access to Applicants' Highly Confidential Information in this proceeding, Mr. Lieberman has executed and filed an Acknowledgement of Confidentiality, which prevents the disclosure of such information.¹⁰

II. Conclusion

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

Respectfully submitted,



By: _____

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April 8, 2010

⁸ See Declaration of Matthew M. Polka, attached hereto as Exhibit 1.

⁹ Reply at 3.

¹⁰ See *Second Protective Order* at 5 ¶ 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.").

EXHIBIT 1

Declaration of Matthew M. Polka

Before the
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ORIGINAL

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DECLARATION OF MATTHEW M. POLKA

1. My name is Matthew M. Polka. I serve as President and Chief Executive Officer for the American Cable Association ("ACA"). I have held this position since May 1997.
2. My business address is One Parkway Center, Suite 212, Pittsburgh, Pennsylvania 15220.
3. As President and Chief Executive Office for ACA, I oversee the day-to-day operations of ACA staff, including ACA Vice President of Government Affairs, Ross J. Lieberman.
4. As ACA Vice President of Government Affairs, Ross J. Lieberman is not, and has never been, involved in the competitive decision-making for any ACA member that is a competitor of Comcast Corporation, General Electric Company, or NBC Universal, Inc.

I, Matthew M. Polka, hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.



Matthew M. Polka
President and Chief Executive Officer
American Cable Association

Executed this 8th 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 **Response to Comcast's Reply to ACA's Opposition to Joint Objection to Disclosure of Confidential and Highly Confidential Information** were served via USPS mail on this 8th day of April, 2010 to the following:

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