

VIA ECFS

June 8, 2010

William T. Lake
Chief, Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *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, Request for Enhanced Confidential Treatment

Dear Mr. Lake:

Comcast Corporation (“Comcast”) and General Electric Company (“GE”), together with NBC Universal, Inc. (“NBCU”) (collectively “Applicants”), pursuant to section 1.41 of the Commission’s rules¹ and the *Second Protective Order* in the above-referenced proceeding,² submit this letter to request enhanced confidential treatment for certain information and documents to be provided by Applicants in response to the Commission’s May 21, 2010 Information and Discovery Requests.³ As discussed below, most of the information and documents to be submitted fall within existing categories of enhanced confidential treatment that the Commission has already recognized in this proceeding. In addition, enhanced confidential treatment is sought below for other information and documents that do not fall into existing categories.

All of the information and documents for which highly confidential treatment is sought, including these new categories, constitutes some of Applicants’ most sensitive business information, is not information that Applicants typically disclose, and is the type of information that the Commission has previously afforded heightened confidential protection. Disclosure of this material to the Applicants’ competitors and/or parties with whom Applicants do business – some of whom are parties in this proceeding – would have a serious negative effect on Applicants’ businesses and place Applicants at a significant competitive disadvantage. Accordingly, Applicants request that the Commission confirm that the categories of information

¹ 47 C.F.R. § 1.41.

² *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*, Second Protective Order, MB Docket No. 10-56, DA 10-371 ¶ 3 (MB rel. Mar. 4, 2010) (“*Second Protective Order*”).

³ *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*, Information and Discovery Request for Comcast Corporation, MB Docket No. 10-56 (rel. May 21, 2010); *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*, Information and Discovery Request for NBC Universal, Inc., MB Docket No. 10-56 (rel. May 21, 2010) (collectively, “Requests”).

and documents identified below may be designated as “Highly Confidential Information” under the *Second Protective Order* and thereby made available solely to Outside Counsel of Record, their employees, and *bona fide* Outside Consultants and experts.⁴

Pursuant to the procedures set forth in the *Second Protective Order*,⁵ this letter describes the information and documents for which Applicants seek heightened protection and explains the need and justification for such protection. The letter identifies, to the extent applicable, the relevant category of Highly Confidential Information already established in the *Second Protective Order* and Applicants’ April 30, 2010 letter supplementing the *Second Protective Order*.⁶ Where the information and documents described below do not fall within an already-established category of Highly Confidential Information, Applicants respectfully request that the Commission supplement the protections of the *Second Protective Order* to extend and apply to such information and documents.

I. Existing Categories of Enhanced Confidentiality

Applicants seek enhanced protection for the following information and documents that fall into categories of information and documents that the Commission has already established as receiving enhanced protection under the *Second Protective Order*:

A. Comcast’s Detailed Financial Data: By the terms of the *Second Protective Order* and the *April 30 Supplement*, the Commission has granted enhanced protection for Comcast’s detailed financial data, including:

- “[c]ost and revenue data, disaggregated by designated market area (“DMA”), city, sub-city unit, or at the individual subscriber level, and separately stated for video, voice and Internet services that is further broken down by month, year or several years, including budget information for 2010;”⁷ and
- “[g]ranular information relating to costs for video-on-demand and online distribution technology, including capital expenditures and operating costs; granular information relating to programming budgets for programming networks, disaggregated on a network-by-network basis.”⁸

Several of the subparts of certain Requests require the production of detailed financial information as defined above, including: Requests 4.c-d, h, j (insofar as Request 4.j relates to

⁴ *Second Protective Order* ¶¶ 3, 5.

⁵ *Id.* ¶ 3.

⁶ Letter from William T. Lake, Chief, Media Bureau, to Michael H. Hammer, Willkie Farr & Gallagher LLP, A. Richard Metzger, Jr., Lawler, Metzger, Keeney & Logan, LLC, David H. Solomon, Wilkinson Barker Knauer, LLP, dated Apr. 30, 2010, in MB Docket No. 10-56 (the “*April 30 Supplement*”).

⁷ *Second Protective Order* ¶ 6.

⁸ *April 30 Supplement* at 2.

detailed financial data), k, and o; 5.f-i; and 6.h-j. Therefore, Comcast respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

B. Comcast’s Detailed Customer Data: By the terms of the *Second Protective Order* and the *April 30 Supplement*, the Commission has granted enhanced protection for Comcast’s detailed customer data, including:

- “[c]ustomer data that is disaggregated by (i) DMA, city and sub-city units, (ii) video, voice, and Internet service, and (iii) periods of time such that competitors could discern trends over time. Additionally, documents that (a) provide data, presented on a granular geographic basis, covering the number of homes passed as well as the number of Comcast’s actual subscribers, (b) provide details of new customers broken down by the number of services they take provided such data is disaggregated on a monthly basis, (c) show the number of customers who were offered and the number who accepted minimum term contracts, on an actual and projected basis, and (d) show detailed monthly churn data, disaggregated by the length of time that customers have been subscribers and describing the reason that the customer discontinued service;”⁹
- “[c]ustomer data disaggregated by Designated Market Area or other limited geographical area, by service, and by period of time.”¹⁰

Several of the subparts of certain Requests require the production of detailed customer data as defined above, including: Requests 4.a-g, i, and l-n; 5.a-b and d-e; 6.f; and 17 (insofar as Request 17 relates to detailed customer data). Therefore, Comcast respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

C. Comcast’s Video Programming and Carriage Agreement Terms and Conditions: By the terms of the *April 30 Supplement*, the Commission has granted enhanced protection for Comcast’s video programming and carriage agreement terms and conditions, including:

- “[i]nformation relating to the details of video programming and carriage agreements, programming rights, retransmission agreements, linear carriage agreements, video-on-demand agreements, and online distribution agreements, including information regarding the details of the negotiation for such agreements; analyses of such agreements or negotiations.”¹¹

⁹ *Second Protective Order* ¶ 6.

¹⁰ *April 30 Supplement* at 2.

¹¹ *Id.*

Several of the Requests or parts thereof require the production of video programming and carriage agreement terms and conditions as defined above, including: Requests 10 (with regard to the cost per subscriber of acquiring distribution rights and revenues including subscription fees); 20-21; 23-24; 32; 41-42; 44; 46; and 51- 52. Comcast respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

D. Comcast’s Current and Forward-Looking Business Strategies and Plans: By the terms of the *April 30 Supplement*, the Commission has granted enhanced protection for Comcast’s current and forward-looking business strategies and plans, including:

- “[i]nformation relating to current and forward-looking business strategies and marketing plans, including detailed business models, projections and plans relating to the proposed Comcast-NBCU joint venture.”¹²

Several of the Requests require the production of current and forward-looking business strategies and plans as defined above, including: Requests 4.p; 5.c; 6.k; 11-13; 15-16; 17 (insofar as Request 17 relates to business strategies and plans), 18, and 19 (insofar as Request 19 refers to Comcast’s investments identified in Request 13); 22; 25-26.a-b; 27-28; 30-31; 33; 34 (insofar as Request 34 relates to Comcast’s plans to expand accessibility to VOD storage facilities); 37; 39; 43; 47; 49-50; 53; 57-59; and 63. Therefore, Comcast respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

E. Comcast Advertising Sales, Financial, and Operating Results: By the terms of the *April 30 Supplement*, the Commission has granted enhanced protection for Comcast’s advertising sales, financial, and operating results, including:

- “[d]etailed information regarding advertising revenues and expenses, including expenses relating to the development of advanced advertising platforms, disaggregated by business unit and type of expense.”¹³

Several of the Requests require the production of advertising sales, financial, and operating results as defined above, including: Requests 6.j (insofar as the subpart seeks information concerning advertising revenue); 10 (insofar as the Request seeks advertising revenues); 26.c; and 48. Therefore, Comcast respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

¹² *Id.*

¹³ *Id.*

F. NBCU's Retransmission Consent Agreement Terms and Conditions: By the terms of the *Second Protective Order*, the Commission has granted enhanced protection for NBCU's retransmission consent agreement terms and conditions, including:

- “[d]ocuments that disclose details of the terms and conditions of the retransmission consent agreements authorizing a multichannel video programming distributor (“MVPD”) to retransmit the signals of NBCU’s owned and operated broadcast stations. Such terms and conditions constitute some of NBCU’s most sensitive business information disclosure of which would give an MVPD a significant advantage in negotiating new retransmission consent agreements;”¹⁴

Several of the Requests require that NBCU will produce retransmission agreements and information relating to the terms and conditions of its retransmission consent agreements, including Requests 33-39. Therefore, NBCU respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

G. Strategy for Future Retransmission Consent Negotiations: By the terms of the *Second Protective Order*, the Commission has granted enhanced protection for NBCU’s strategy for future retransmission consent negotiations, including:

- “[i]nformation relating to NBCU’s future retransmission consent negotiations to the extent that the information concerns profits and per-subscriber fees;”¹⁵

Several of the Requests require the production of future retransmission consent negotiations as defined above, including Requests 34-39. Therefore, NBCU respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

H. NBCU's Advertising Revenue Data: By the terms of the *Second Protective Order*, the Commission has granted enhanced protection for NBCU’s advertising revenue data, including:

- “[i]nformation relating to advertising revenue that (i) discloses an individual NBC owned and operated station’s net advertising revenue, (ii) discloses the net advertising revenue for the NBC Network only, disaggregated by source (i.e., solely the advertising revenue, excluding syndicated programming or other licensing fees) and by year, or (iii) discloses the relative values of advertising

¹⁴ *Second Protective Order* ¶ 6.

¹⁵ *Id.*

revenues generated by a viewer of NBC programming from an online source compared to an NBC owned and operated television station.”¹⁶

Several of the Requests require the production of advertising revenue data as defined above, including Request 29.c, 42.f, 43- 47, 49, and 51. Therefore, NBCU respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

I. NBCU’s Video Programming and Carriage Agreement Terms and Conditions: By the terms of the *April 30 Supplement*, the Commission has granted enhanced protection for NBCU’s video programming and carriage agreement terms and conditions, including:

- “[i]nformation relating to the details of video programming and carriage agreements, including linear carriage agreements, video-on-demand agreements, and online distribution agreements, including information regarding the details of the negotiation for such agreements; analyses of such agreements or negotiations.”¹⁷

Many of the Requests require the production of video programming and carriage agreement terms and conditions, negotiations and analyses as defined above, including Request 5, 18.c, 19.c, 24-40, 45-48, 52, 54-57. Therefore, NBCU respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

J. NBCU’s Current and Forward-Looking Business Strategies and Plans: By the terms of the *April 30 Supplement*, the Commission has granted enhanced protection for NBCU’s current and forward-looking business strategies and plans, including:

- “[i]nformation relating to current and forward-looking business strategies and marketing plans, including detailed business models and projections, and plans relating to the proposed Comcast-NBCU joint venture.”¹⁸

Many of the Requests require the production of current and forward-looking business strategies and plans as defined above, including Request 21 (the third-party documents and information called for in this Request are incorporated into internal NBCU documents involving business strategies, models, analyses and plans), 23, 26, 28-32, 39, 40, 41 45, 48, 50, 51 (the third-party documents and information called for in this Request are incorporated into internal NBCU documents involving business strategies, models, analyses and plans), 55, and 57. Therefore, NBCU respectfully requests that the Commission confirm that the documents and

¹⁶ *Id.*

¹⁷ *April 30 Supplement* at 2.

¹⁸ *Id.* at 3.

information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

K. NBCU’s Detailed Financial Data: By the terms of the *April 30 Supplement*, the Commission has granted enhanced protection for NBCU’s detailed financial data, including:

- “[d]etailed information regarding advertising sales, financial, and operating results, including projected advertising sales revenue for 2010 disaggregated by channel, programming genre, and distribution platform; detailed income, cash flow, and operating metrics, and other similar financial data disaggregated by time period and source, for recent or current time periods.”¹⁹

Several of the Requests require the production of detailed financial data as defined above, including Request 6.h-6.j, 7.h-7.j, 15, 16, 17.a, 17.b, 18.a, 18.b, 19.a, 19.b, 20, 29.c, and 44. Therefore, NBCU respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

L. NBCU’s Detailed Online Viewership Information: By the terms of the *April 30 Supplement*, the Commission has granted enhanced protection for NBCU’s detailed online viewership information, including:

- “[i]nformation relating to the details of online viewership of video programming, including the name of the program, the type of program, whether it was Internet-exclusive, the number of times each program was viewed, the total length of each program, and the advertising model associated with each program.”²⁰

Several of the Requests require the production of online viewership information as defined above, including Request 6.f, 6.g, 7.f, and 7.g. Therefore, NBCU respectfully requests that the Commission confirm that the documents and information produced in response to these Requests may be treated as “Highly Confidential Information” under the *Second Protective Order*.

* * *

Disclosure to Applicants’ competitors of the highly sensitive and proprietary commercial documents and information described above would cause Applicants significant competitive harm. These documents and information are the same type of documents and information for which the Commission has granted enhanced protection in the past, and Applicants respectfully request the same treatment here.

¹⁹ *Id.*

²⁰ *Id.*

II. Additional Categories of Enhanced Confidentiality Requested

In addition, Applicants seek enhanced protection for the following categories of information and documents that have not been granted enhanced confidentiality protection by the Commission in this proceeding but have strong precedent for enhanced protection:

A. Comcast's Detailed Online Viewership Information: By the terms of the *April 30 Supplement*, the Commission has granted enhanced protection for NBCU's detailed online viewership information, as described in subpart *I.L* of this letter above.²¹ Certain Requests made to Comcast seek information that would fall under the category of "Detailed Online Viewership Information" as defined in the *April 30 Supplement*. Therefore, Comcast respectfully requests that the Commission grant the same enhanced confidentiality protection for the following Requests: 6.g (seeking the "total number of subscribers and unique users of each Online Video Programming Distributor" who view "content produced or distributed by each Non-Broadcast Programming Network" on a monthly basis); and 10 (insofar as that Request seeks the "number of unique users; videos viewed; total and average time spent viewing videos; total streams; ad impressions; click through rates; and any other metric commonly used by the Company to measure or track information regarding the Company's Online Video Programming Distributor's website").

B. NBCU's Ownership Structures. Certain of the Requests seek detailed information regarding NBCU's ownership structure. Requests 6-12 ask NBCU to identify each Broadcast Programming Network, Non-Broadcast Programming Network, Movie Producer, Wholesale Movie Distributor, Video Programming Producer, Wholesale Video Programming Distributor, and Online Video Programming Distributor "owned by, operated by, managed by or attributed to" NBCU. These requests also ask NBCU, among other things, to identify every other owner of these entities and describe the "Company's management and/or control rights" with regard to that entity. Request 22 asks NBCU to identify any other entity in which it has an attributable interest.

NBCU's responses to these Requests will necessarily reveal highly sensitive information regarding the allocation of management and control rights between NBCU and its business partners. NBCU and its business partners treat such information as highly confidential and do not release it to the public. Indeed, release of such information would give NBCU's competitors and customers detailed insight not only into how NBCU organizes and structures its business, but also as to how NBCU's business partners organize and structure their businesses. Access to such information would give competitors and customers a strategic and informational advantage that NBCU and its business partners do not enjoy. NBCU therefore respectfully requests that the Commission grant enhanced confidentiality protection under the *Second Protective Order* to the documents and information it produces in its responses to Requests 6-12 and 22.

²¹ *Id.*

C. *NBCU Management Practices.* Request 42 asks for a description of NBCU's processes related to: developing and producing first run movies; developing television programs, selecting and scheduling television programs, movies and professional video for airing or distributing through the Company's distribution outlets, selecting unaffiliated and affiliated movies for distributing on a wholesale basis, and selecting unaffiliated and affiliated television programs for distribution by other distributors. Release of NBCU's responses to this Request would provide competitors and customers a detailed picture of how NBCU functions as a company. The business processes described in response to Request 42 go to the heart of NBCU's business – developing movies and television programming, deciding how to distribute these movies and programming, deciding which movies and programs to license to third-parties, and deciding which movies and programs to license from third parties. Access to such information would give NBCU competitors and customers a unique insight into how NBCU runs its business providing them with a significant strategic and informational advantage that NBCU does not enjoy. NBCU therefore respectfully requests that the Commission grant enhanced confidentiality protection under the *Second Protective Order* to its response to Request 42.

D. *NBCU Wholesale Movie Distribution Agreements Terms and Conditions.* The *April 30 Supplement* grants enhanced protection for NBCU's video programming and carriage agreement terms and conditions, as discussed in *I.I* above.²² Request 17.c seeks the same kind of information with regard to "the Company's wholesale distribution rights for movies." As with NBCU's video programming and carriage agreements, the information sought in Request 17.c is proprietary to NBCU and the release of such information would be severely detrimental to the competitive interests of NBCU. NBCU therefore respectfully requests that the Commission grant enhanced confidentiality protection under the *Second Protective Order* to the documents and information it produces in response to Request 17.c, consistent with the confidentiality treatment afforded to NBCU's video programming and carriage agreements.

E. *GE Capital and Third-Party Business Plans.* By the terms of the *April 30 Supplement*, the Commission has granted enhanced protection for NBCU's current and forward-looking business strategies and plans.²³ Request 59 asks NBCU to provide similar information with regard to GE Capital and/or a third-party newspaper publisher. Specifically, Request 59 directs NBCU to describe "the steps the Company will take to divest KXAS-TV, Fort Worth, TX or otherwise come into compliance with the Commission's newspaper/broadcast cross-ownership rule in the Dallas-Ft. Worth, Texas DMA." GE Capital holds an attributable interest in the newspapers in question through its loans to and equity interest in the newspaper publisher. NBCU's response to Request 59 will thus include highly sensitive information regarding how the newspaper publisher may deal with these attributable interests. Release of this information will place GE Capital and the newspaper publisher at a significant competitive disadvantage as they move to resolve any concern regarding the newspaper/broadcast cross-ownership rule in the Dallas-Ft. Worth DMA. NBCU therefore respectfully requests that the Commission grant enhanced confidentiality protection under the *Second Protective Order* to its response to Request

²² *April 30 Supplement* at 2.

²³ *Id.* at 3.

59, consistent with the confidentiality treatment afforded to NBCU's current and forward-looking business strategies and plans.

In sum, consistent with longstanding Commission precedent, Applicants respectfully request that the Commission confirm that the specific categories of information and documents discussed herein may be treated as "Highly Confidential Information" under the *Second Protective Order* and the *April 30 Supplement*, and made available solely to Outside Counsel of Record, their employees, and *bona fide* Outside Consultants and experts. Moreover, Applicants request that the Commission supplement the protections of the *Second Protective Order* to extend and apply to material in categories not already identified in the *Second Protective Order*, as set forth in parts *II.A* through *II.E* above. Enhanced confidential treatment would protect Applicants' legitimate interests in their own sensitive business data and guard against misuse of such data, while still allowing parties in this proceeding access to such information through outside counsel.²⁴

If you have any questions concerning the foregoing, do not hesitate to contact the undersigned.

Respectfully submitted,

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²⁴ See *Adelphia Second Protective Order*, 20 FCC Rcd at 20075-76 (recognizing that the right to meaningfully participate in a proceeding is not damaged by the grant of enhanced confidential protection for highly sensitive and confidential information).

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