

February 22, 2011

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
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*

Dear Ms. Dortch:

Enclosed please find a copy of an e-mail sent by the undersigned to Jim Bird, Senior Counsel, Office of General Counsel, concerning the above-referenced proceeding.

Please do not hesitate to contact me should you have any questions.

Sincerely yours,

Michael H. Hammer
Michael H. Hammer
Counsel for Comcast Corporation

Enclosure

Bell, Brien

From: Hammer, Michael
Sent: Monday, February 21, 2011 3:29 PM
To: Jim Bird (jim.bird@fcc.gov)
Cc: 'DSolomon@wbklaw.com'; Bell, Brien
Subject: Confidentiality Request

Jim –

As required by the Commission's Order approving the Comcast-NBCU transaction,^[1] Comcast and NBCUniversal intend to submit on Tuesday, February 22, 2011, certain information which the companies believe is entitled to enhanced confidential treatment under the new protective order that we understand the Commission intends to adopt in this proceeding. This email describes the information for which such Highly Confidential treatment is sought and the basis for such treatment.

Comcast's and NBCUniversal's request for enhanced confidential treatment is very limited. The companies request such treatment only for: (1) a single figure reflecting the total number of subscribers to Comcast's standalone Broadband Internet Access Service, and (2) a single letter sent by NBCUniversal to Hulu regarding NBCUniversal's governance rights in Hulu. Both types of information are commercially sensitive, are not typically disclosed by Comcast or NBCUniversal, and have been afforded enhanced confidential protection by the Commission in this and other proceedings. Accordingly, Comcast and NBCUniversal request that this information may be designated as Highly Confidential under the new protective order and made available solely to outside counsel, their employees, and *bona fide* outside consultants and experts who have signed the new protective order and only for the purpose of reviewing Comcast and NBCUniversal's compliance with the conditions imposed in the *Order*.

The Number of Subscribers to Comcast's Broadband Internet Access Service. The Comcast-NBCU *Order* requires Comcast to submit detailed information regarding "the number of standalone Broadband Internet Access Service lines provisioned."^[2] Comcast does not publicly disclose the number of customers who subscribe to its High-Speed Internet service on a standalone basis, and the Commission has afforded this same information Highly Confidential treatment in prior submissions in this proceeding.^[3] If a competitor had access to such information, it could use it for anticompetitive purposes, discern Comcast customer trends over time, and gain an unfair advantage in the marketplace.

Moreover, the requirement in the Comcast-NBCU Order is that Comcast submit the number of its Broadband Internet Access Service subscribers. In order to determine if Comcast has satisfied this reporting requirement, it is enough for parties to know that the number has been submitted; they need not know what the precise number is. Therefore, enhanced confidential treatment of the number will not prevent anyone from making a determination about whether Comcast has met its obligation in this instance. In fact, given the absence of relevance to the issue of compliance, there is reason to presume that any party seeking access to the subscriber number would be doing so primarily for anticompetitive reasons and this, too, supports limiting such access to outside counsel and consultants. For all of these reasons, Comcast and NBCUniversal request enhanced confidential treatment for this information.

Internal Hulu Governance. The Comcast-NBCU Order requires NBCUniversal to "submit to the Commission documentation evidencing that its interest in Hulu is purely economic."^[4] As noted, the companies intend to submit a letter from NBCUniversal to Hulu which provides such documentation. The letter will reveal non-public and highly sensitive details about the ownership and control structure of Hulu, which would harm not only NBCUniversal but also Hulu and its non-NBCU owners, who are not parties to this proceeding. The Hulu LLC Agreement, executed by all of Hulu's owners, mandates that Hulu's owners maintain strict confidentiality

about the “operations of [Hulu],” which would include the management and control provisions at issue here. When disclosure is required to a federal agency, Hulu’s owners are obligated by contract to “limit the scope of disclosure” and to “disclose[] to the minimum extent necessary.” This demonstrates the importance that Hulu and its owners attach to management and control issues and underscores the need for enhanced protection of this information.

Access to highly sensitive information about the inner workings of Hulu’s management could allow Hulu’s competitors and other parties with whom Hulu does business to make reasonably informed inferences about how future issues might be resolved under Hulu’s new voting structure. This could give those parties an unfair advantage in their dealings with Hulu, to the detriment of all of Hulu’s investors. Previously in this proceeding, the Commission recognized that details about management and control are commercially sensitive and granted Highly Confidential treatment to this very kind of information, including “[d]etailed information involving NBCU and/or GE that includes highly sensitive information regarding the allocation of management and control rights for entities that is not otherwise publicly available.”^[5] Comcast and NBCUniversal request that it follow the same approach here.

In sum, consistent with Commission precedent, including its treatment in this very proceeding of the same type of information at issue here, Comcast and NBCUniversal request that the information described herein may be treated as Highly Confidential under the new protective order. In fact, Comcast’s and NBCUniversal’s request for enhanced confidential treatment is all the more reasonable here because the sole purpose of access to the information at this point is to assess whether the companies have met their duty to comply with the conditions in the Comcast-NBCU *Order*. There is no need for substantive analysis of the information by in-house employees of competitors, as there was prior to adoption of the Commission’s Order. Here, the check on compliance can easily be done by outside counsel and consultants who may obtain access to information that is designated as Highly Confidential.

Thanks for your consideration of this request. If you have any questions, do not hesitate to contact me.

Mike

^[1] *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*, Memorandum Opinion and Order, MB Docket No. 10-56, FCC 11-4 (rel. Jan. 20, 2011) (“*Order*”).

² *Order* at App. A, § IV.D.3.

³ *See, e.g.*, Comcast Corporation, Response to the Commission’s Information and Discovery Request, MB Docket No. 10-56, Ex. 4.7(b) at 11-12 (filed June 30, 2010); Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, Attachment at 7 (Nov. 22, 2010) (treating as Highly Confidential and redacting the number of Comcast standalone broadband customers). EarthLink filed a letter treating the same information as Highly Confidential. *See* Letter from Jennifer P. Bagg, Lampert, O’Connor & Johnston, P.C., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Nov. 15, 2010).

⁴ *Order* at App. A, § IV.C.4.

⁵ Letter from William T. Lake, Chief, Media Bureau, to Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, *et al.*, MB Docket No. 10-56, at ¶ N (June 11, 2010).