

**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.)
)
For Consent to Assign Licenses or)
Transfer Control of Licensees)

To: Chief, Media Bureau

**RESPONSE OF BLOOMBERG L.P. TO OBJECTION TO DISCLOSURE OF
CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION**

Bloomberg L.P. (“Bloomberg”) hereby responds to Comcast Corporation’s (“Comcast’s”) objection to the disclosure of Confidential and Highly Confidential Information to Bloomberg’s Outside Counsel (“Objection”). As Bloomberg is in full compliance with the *Compliance Protective Orders*,¹ the Commission should reject Comcast’s Objection and expeditiously allow Bloomberg’s Outside Counsel of Record access to Confidential and Highly Confidential Information submitted by Comcast in this proceeding.

In its Objection, Comcast nowhere alleges, much less demonstrates, that the Acknowledgements² submitted by Patton Boggs LLP (“Patton Boggs”) personnel, on behalf of Bloomberg, run afoul of or are in any way inconsistent with the requirements set forth in the *Compliance Protective Orders*. Comcast, for example, does not dispute that the attorneys at

¹ *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign or Transfer Control of Licenses or Authorizations*, Protective Order, 26 FCC Rcd 2045 (MB 2011) (“*First Protective Order*”); *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign or Transfer Control of Licenses or Authorizations*, Second Protective Order, 26 FCC Rcd 2052 (MB 2011) (“*Second Protective Order*”).

² Letter from Janet Moran, Patton Boggs LLP, Counsel for Bloomberg, to William Lake, Chief, Media Bureau, Federal Communications Commission, MB Docket No. 10-56 (July 6, 2011).

Patton Boggs qualify as “Outside Counsel of Record” pursuant to the *Compliance Protective Orders*.³ Nowhere does Comcast argue that the other Patton Boggs employees who signed acknowledgements do not qualify as the types of personnel with whom Outside Counsel of Record may share Confidential and Highly Confidential Information.⁴ Comcast does not maintain that Bloomberg is not a party to the Comcast/NBCU Merger proceeding, and in any event, such an allegation would be entirely inaccurate.⁵ Nor does Comcast maintain that any individual at Patton Boggs will use any Confidential or Highly Confidential Information for an impermissible purpose.

Rather, Comcast asks the Media Bureau (“Bureau”) to fundamentally change the requirements set forth in the *Compliance Protective Orders* for access to Confidential and Highly Confidential Information. Comcast complains that Bloomberg has failed to take steps that are nowhere to be found in the *Compliance Protective Orders*. In principal, Comcast argues that Bloomberg has failed to demonstrate a specific need for its Outside Counsel to access the Confidential and Highly Confidential Information that Comcast has submitted to the Commission to date.⁶ Nowhere, however, do the *Compliance Protective Orders* require Bloomberg to make such a showing. Rather, those representatives of Bloomberg signing acknowledgements need only to agree to abide by the terms of the *Compliance Protective Orders*, such as by using Confidential and Highly Confidential Information only for permissible purposes.⁷

³ See *First Protective Order* at ¶ 3; *Second Protective Order* at ¶ 5.

⁴ See *First Protective Order* at ¶ 9; *Second Protective Order* at ¶ 9.

⁵ See 47 U.S.C. § 309(d); Petition to Deny of Bloomberg L.P., MB Docket 10-56 (filed June 21, 2010) (“Petition to Deny”).

⁶ See Objection at 2-3.

⁷ See *First Protective Order*, 26 FCC Rcd at 2051; *Second Protective Order*, 26 FCC Rcd at 2060.

The Bureau should not change the *Compliance Protective Orders* to obligate parties seeking access to Confidential and Highly Confidential Information to demonstrate a “nexus between the information the party is seeking, a condition adopted in the *Comcast/NBCU Order*, and the condition’s impact upon the party seeking access.”⁸ As a party to this proceeding, Bloomberg has an interest in ensuring that Comcast complies with all of the conditions imposed by the Commission to ensure that the Comcast/NBCU transaction serves the public interest.

Bloomberg has commented on a wide variety of issues in this proceeding, including those pertaining to online video. For example, Bloomberg argued to the Commission that the Merger would eliminate “the formerly existing competition between Hulu.com and Comcast’s own online video model ‘Fancast Xfinity’ (the Comcast version of TV everywhere)” and would generally reduce competition among over-the-top video providers.⁹ Bloomberg also asked the Commission to impose conditions related to online video practices.¹⁰ As a provider of video programming, it is in Bloomberg’s interest for there to be vibrant competition among over-the-top video providers and for Comcast to comply with the conditions set forth by the Commission related to Hulu LLC. Thus, even were the Bureau to adopt the new requirements requested by Comcast, Bloomberg would qualify for access to Confidential and Highly Confidential Information.

More importantly, however, the new procedures advocated by Comcast are fundamentally flawed and unnecessarily burdensome. Were the Bureau to adopt them, parties would be required to submit a new request for each piece of Confidential or Highly Confidential Information to which it wanted access, and Comcast would have the opportunity to object to each one of those requests. Given that, in the event of an objection, a party is not allowed access

⁸ Objection at 3.

⁹ Bloomberg Response to Petitions to Deny and Comments, MB Docket No. 10-56 (filed July 21, 2010) at 18.

¹⁰ *See, e.g.*, Petition to Deny at 67-68.

to Confidential or Highly Confidential Information until “the objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction, and unless such objection is resolved in favor of the person seeking access,”¹¹ parties could be subjected to lengthy and repeated delays in obtaining necessary information, thus frustrating their ability to verify Comcast’s compliance with conditions. Furthermore, the requirements sought by Comcast put the cart before the horse. Parties would be required to explain their specific need for information before they are allowed to see it, thus potentially making it difficult to know whether the information contains material of particular relevance to them. Such an approach is fundamentally unfair and should not be adopted by the Bureau.

Finally, to the extent that Comcast wishes to change the terms of the *Compliance Protective Orders*, it should not be able to do so through an objection involving only one party. Such a change in the standard would affect not only Bloomberg but also numerous other parties entitled to such information. The Commission released the *Compliance Protective Orders* on February 22, 2011 (with an Erratum on March 4, 2011). If Comcast had wanted to change the scope or access procedures set forth in the *Compliance Protective Orders*, as it is substantively trying to do now, it should have sought reconsideration or clarification within 30 days of their release. Instead, it appears that the first time that a party to the merger proceeding is seeking access to Confidential and Highly Confidential Information (almost five month after the release of the *Compliance Protective Orders*),¹² Comcast is trying to stymie access by parties. Therefore, the FCC should swiftly reject Comcast’s Objection and allow Bloomberg access to Confidential and Highly Confidential Information. If Comcast would like the Commission

¹¹ *First Protective Order* at ¶ 6; *Second Protective Order* at ¶ 12.

¹² Bloomberg is unaware of any other party filing Acknowledgements of Confidentiality pursuant to the *Compliance Protective Orders*; no such Acknowledgements are available in MB Docket No. 10-56 through ECFS.

change the terms of the *Compliance Protective Orders*, it should be done in a manner in which all interested parties would be allowed to comment on such a proposal.

While Bloomberg appreciates the need for sensitive information to be adequately protected, the *Compliance Protective Orders* adopted by the Commission do just that. They appropriately restrict the individuals to whom Confidential or Highly Confidential Information can be disclosed and the purposes for which such information can be used.¹³ Patton Boggs personnel have pledged to comply with these restrictions, just as they complied with the restrictions set forth in the Protective Orders adopted by the Bureau at the outset of this proceeding,¹⁴ and Comcast has pointed to no evidence suggesting otherwise.

Accordingly, the Bureau should set aside Comcast's Objection and expeditiously allow Bloomberg's Outside Counsel of Record access to Confidential and Highly Confidential Information submitted by Comcast in this proceeding.

Respectfully submitted,



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¹³ See, e.g., *First Protective Order* at ¶¶ 8, 9; *Second Protective Order* at ¶¶ 7-9.

¹⁴ See Acknowledgements of Confidentiality of Bloomberg L.P., MB Docket No. 10-56 (filed Mar. 19, 2010; Mar. 26, 2010; Apr. 14, 2010; Apr. 16, 2010; June 16, 2010; June 29, 2010; July 26, 2010; July 29, 2010; Aug. 9, 2010; Aug. 13, 2010; Oct. 8, 2010; and Nov. 12, 2010).

CERTIFICATE OF SERVICE

I, Lisa Henderson, hereby certify that on this 14th day of July 2011, I caused true and correct copies of the foregoing Response by Bloomberg L.P. to Objection to Disclosure of Confidential and Highly Confidential Information to be served by first-class mail (with courtesy copies by e-mail) on the following:

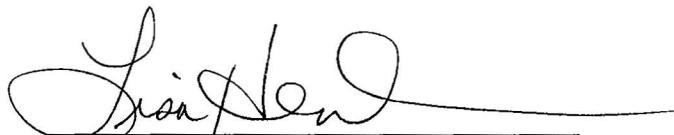
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