WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W. Washington, DC 20006-1238

Tel: 202 303 1000 Fax: 202 303 2000

February 17, 2012

VIA ELECTRONIC FILING

William T. Lake Chief, Media Bureau Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554

Re: Request for Clarification Regarding Implementation of the Benchmark Condition,

MB Docket No. 10-56

Dear Mr. Lake:

This letter is submitted on behalf of Comcast Corporation ("Comcast") and NBCUniversal Media, LLC ("NBCUniversal") concerning the "Benchmark Condition" of the *Comcast-NBCUniversal Order*.¹ The companies seek clarification from the Media Bureau on mechanisms that will support their ability to fully comply with the Benchmark Condition. To date, Online Video Distributors ("OVDs") requesting programming under the Benchmark Condition have sought comparable programming without disclosing their peer programming deal to NBCUniversal. OVDs suggest that they cannot share their peer deals due to confidentiality restrictions in those agreements. Although the Benchmark Condition does not expressly address this situation, the language and structure of the Condition make clear that NBCUniversal must have access to the peer deal in order to comply with its obligations. Bureau guidance is needed regarding what procedure should be followed to ensure that OVDs can make efficient use of the Benchmark Condition and NBCUniversal has access to the peer deal on confidential terms that protect the interests of the peer. The requested guidance will serve the public interest by promoting effective implementation of the Benchmark Condition.

NBCUniversal cannot comply with its obligation to shape an equivalent content license for a requesting OVD without appropriate disclosure of the baseline peer deal that NBCUniversal is

In re Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, 26 FCC Rcd. 4238 (2011) ("C-NBCU Order").

expected to match. Lack of access to the peer deal frustrates a process that the Commission intended to be straightforward when it crafted the Benchmark Condition. Currently, the only step in the process during which it is explicit that the peer deal must be shared is in Phase 1 of an arbitration, when the arbitrator can and should order disclosure of the peer deal. Without clarification from the Bureau, continued withholding of a peer deal by OVDs in connection with a Benchmark request will impede negotiations, delay resolution of licensing agreements, and likely result in arbitration proceedings in most cases, increasing the costs and burdens for both OVDs and NBCUniversal.

Comcast and NBCUniversal respectfully request that the Media Bureau (1) clarify that, to effectuate the Commission's intended goals in the Benchmark Condition, disclosure of the peer deal is required, and (2) provide a process that parties should use to protect the confidentiality of such disclosure and guidance on other confidential filings made pursuant to the Benchmark Condition. Specifically, Comcast and NBCUniversal propose that the Bureau issue an additional protective order in MB Docket No. 10-56 that would ensure the confidentiality of peer deals when disclosed in connection with a Benchmark request. Without such clarification and instruction, NBCUniversal is unable to effectively negotiate and fashion appropriate agreements with OVDs under the relatively short time periods for negotiations set forth in the *Order* – and without the resort to arbitrations in each instance. The Bureau has delegated authority to take these actions and has done so in analogous circumstances.

I. Disclosure Of Peer Deals Is Both Intended And Required Under The Benchmark Condition.

The Benchmark Condition of the *Order* obligates NBCUniversal to provide an OVD with "Comparable Programming" on terms that are "economic[ally] equivalent" to the terms the OVD has received from a qualifying peer. In particular, the *Order* requires that "[t]he price, terms and conditions [offered by NBCUniversal] shall be the economic equivalent of the price, terms and conditions the OVD paid for the Comparable Programming." On its face, this provision and all of its components necessarily require that an OVD disclose the peer deal to NBCUniversal so that it can respond with a proposal for comparable programming.

For example, "Comparable Programming" is "Video Programming that is reasonably similar in kind and amount." To determine whether Video Programming constitutes Comparable Programming, the *Order* instructs the parties to "consider . . . (i) the number of channels and/or shows; and (ii) the similarity of the value of the Video Programming, as evidenced by ratings, affiliate fees and/or advertising revenues and the time elapsed since the programming was first distributed." These and

See C-NBCU Order, App. A, § IV.A.2.b; see also id., App. A, § I.

³ *Id.*, App. A, § IV.A.2.b.(ii) (emphasis added).

⁴ *Id.*, App. A, § I.

⁵ *Id*.

other relevant factors cannot be properly considered without disclosure of all of the terms and conditions of the peer deal, which together and individually can significantly affect both content and economic "comparability." Without knowing, for example, the specific channels or shows – and how many of them – are included in the peer deal, NBCUniversal business executives cannot determine whether the programming it is offering (or being asked to offer) is "comparable" in terms of the numbers and value of channels or shows. There was not, and could not have been, any contemplation that NBCUniversal would simply have to take the word of the OVD on such critical matters.

The *Order* also requires NBCUniversal to provide the OVD with terms that "consist of the same basic Economic Model(s) for the Comparable Programming." An "Economic Model," in turn, is the "primary method by which the Video Programming is monetized" Again, in order to determine whether a request meets these requirements or shape an acceptable offer, NBCUniversal must have access to the peer deal.

II. Proposed Clarification And Third Protective Order.

The Media Bureau should issue a public notice clarifying that disclosure of a peer deal is required for any requests made under the Benchmark Condition going forward. Contemporaneously with this notice, the Bureau should issue a "Third Protective Order For Compliance" ("Third Protective Order") in MB Docket No. 10-56 that (1) requires disclosure of a peer deal by OVDs invoking the Benchmark Condition of the *Order*; and (2) establishes appropriate confidentiality restrictions and conditions on such disclosure. A proposed Third Protective Order, modeled on an existing protective order adopted under the *Order*, is enclosed as Attachment A to this letter.

The notice would make clear that OVDs that intend to invoke the *Order* to obtain programming from NBCUniversal pursuant to the Benchmark Condition must comply with the Third Protective Order and provide a full and unredacted copy of their peer deal(s) to authorized representatives of NBCUniversal who have signed the Third Protective Order acknowledgments, subject to the confidentiality restrictions and conditions in the Third Protective Order. The Third Protective Order specifies the process and timetable for: (1) OVDs to provide confidential notice of a Benchmark request to NBCUniversal and the Commission; (2) NBCUniversal representatives to execute and serve the required acknowledgements on the OVD and the Commission; and (3) disclosure of the peer deal by the OVD to the authorized NBCUniversal representatives. The 90-day negotiation period for Benchmark requests specified in the *Order*⁸ shall commence upon NBCUniversal's receipt of the peer deal.

⁶ *Id.*, App. A, § IV.A.2.b.(ii).

⁷ *Id.*, App. A, § I.

⁸ *Id.*, App. A, § VII.A.1.

The Commission should also make clear that any subsequent confidential filings with the Commission required under the *Order*, such as a confidential summary of the dispute or submission of final offers, will not be filed pursuant to

William T. Lake February 17, 2012 Page 4

Unlike the first two protective orders adopted in MB Docket No. 10-56, the Third Protective Order will not allow third parties (i.e., parties other than the OVD invoking the protection and NBCUniversal) to sign acknowledgements of confidentiality and request access to submissions filed under the Third Protective Order. 10 Additionally, the Third Protective Order will restrict access to the peer deal to NBCUniversal's: (1) outside counsel; (2) outside experts; (3) in-house counsel; and (4) a limited number of essential business persons with executive management and negotiating responsibilities within the business unit(s) responsible for negotiating the licensing of content via particular business models that are implicated by a Benchmark request. For each such business unit, the number of essential business persons would likely be three: the senior executive overseeing the unit, a mid-level executive who would assist in the negotiations of the Benchmark deal, and the head of the division who would approve the deal. These essential business persons will be designated by inhouse counsel and identified by title and general area of responsibility, on a case-by-case basis, depending on the relevant business model(s), business unit, category or categories of programming, and other terms and conditions of the peer deal. The number of designated business persons will typically range from three, as noted above (for Benchmark requests implicating only one business unit and business model), to six (for Benchmark requests implicating multiple business models, business units and/or categories of programming); although, in all events, NBCUniversal will have the right to seek more than six upon a showing of good cause. ¹¹ And, in all cases, such business persons shall be authorized to use the information solely for purposes of responding to a specific OVD's request.

This limited and controlled access is necessary to facilitate effective negotiations and fashion appropriate agreements between NBCUniversal and an OVD under the relatively short time periods for

the terms of the Third Protective Order, but must nonetheless follow the Commission's rules and guidelines regarding confidential submissions. *See* 47 C.F.R. § 0.459; Office of the Secretary, Federal Communications Commission, Guidelines for Filing Paper Documents, *available at* http://transition.fcc.gov/osec/guidelines.html ("Documents containing information to be withheld from public inspection should be clearly and conspicuously labeled 'CONFIDENTIAL, NOT FOR PUBLIC INSPECTION.' This designation should be placed in the upper right-hand corner of each page. If these instructions are not followed, the filer increases the risk for inadvertent disclosure of confidential information."). Following these procedures will ensure that confidential information is properly identified by Commission personnel, reducing the risk of inadvertent disclosure.

- Because the Benchmark Condition is designed to facilitate licensing agreements between an OVD and NBCUniversal, there is no basis for third parties to attempt to use the Benchmark process to circumvent the confidentiality provisions in peer deals.
- For example, under NBCUniversal's current business structure, responding to an OVD request involving *Pay Per View/Video On Demand* or *Electronic Sell Through* would require the assistance of the senior executive and at least one mid-level executive from NBCUniversal's Digital Distribution division, as well as ultimate approval from the head of this division. Similarly, an OVD request involving *Pay, Basic, Free*, or *Subscription Video On Demand* would require the assistance of the senior executive and at least one mid-level executive from NBCUniversal's TVD/New Media division to respond with an "economically equivalent" deal, which again would require ultimate approval from the head of the division. If an OVD request encompasses a hybrid business model that involves aspects of the business models handled by each of these different NBCUniversal divisions, assistance from the two senior executives and two mid-level executives from each division would be required (as well as approval of the heads of each division).

negotiations set forth in the Order – and without the resort to arbitration if avoidable. The Commission has recognized that the scope of access to confidential information may vary depending on the nature of the activities, information, and interests at issue. Under 47 C.F.R. § 76.9(c), for example, confidential materials may be disclosed to officers or employees of a party who are identified by another party as being directly involved in a matter. Use of the confidential materials by such business persons is strictly limited to the relevant proceeding. See id. § 76.9(e). Similarly here, the proposed Third Protective Order allows limited access to the peer deal solely for purposes of responding to a Benchmark request, restricts signatories from further disclosing the peer deal to others, including anyone else at NBCUniversal, and requires that the confidential information be destroyed or returned following termination of the proceeding. ¹³ Because non-disclosure agreements with comparable confidentiality restrictions are a common feature of doing business in the media industry. including as part of negotiating licensing agreements with buyers that may also be competitors in other parts of the business, NBCUniversal's in-house counsel and business executives are well-versed in complying with these kind of obligations. The Commission would also have authority to enforce and redress any violations of the proposed Third Protective Order – whether by in-house or outside counsel or NBCUniversal business persons – including through cease and desist orders, forfeitures, and other sanctions.

III. The Media Bureau Has The Authority To Make The Requested Clarification And Issue A Third Protective Order For Compliance.

The Media Bureau "acts for the Commission under delegated authority [] in matters pertaining to multichannel video programming distribution," including the authority to "administer and enforce rules and policies" regarding program access.¹⁴ In addition, the Media Bureau routinely issues

_

Although the existing protective orders in this docket generally limit access to confidential compliance filings to in-house counsel not involved in competitive decision-making and/or outside counsel and experts, the purpose of these disclosures is for compliance review, which is inherently a legal activity. See, e.g., In re Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees, Protective Order For Compliance, 26 FCC Rcd. 2045 (MB 2011). The Benchmark Condition, in contrast, involves a fundamentally different goal; namely, fashioning a licensing agreement, which is inherently a business activity. Because the licensing agreement must mirror the peer deal, those involved in shaping that business arrangement must have access to the peer deal. And, as a practical matter, these same individuals will necessarily know the financial and other terms of each resulting "economically equivalent" agreement at some point in time, since NBCUniversal will be providing the comparable programming to the requesting OVD under the "equivalent" agreement. Putting unnecessary "blinders" on these NBCUniversal business persons before the agreement is reached, while expecting them subsequently to implement and administer the agreement, makes no sense, would likely result in fewer negotiated agreements and more arbitrations, and plainly runs counter to the intention of the Benchmark Condition.

Moreover, any future requests for discovery of a peer deal or other confidential submissions filed under the Third Protective Order (i.e., as part of discovery in a separate arbitration proceeding between NBCUniversal and a different – and potentially competitive – OVD or MVPD) would be subject to the more restrictive protections of the Model Protective Order (i.e., access will be limited to outside counsel and outside experts solely for establishing fair market value of the programming at issue). *See C-NBCU Order*, App. E.

See 47 C.F.R. § 0.61(f)(2), (7); see also id. § 0.283 (delegating authority to the Media Bureau Chief).

protective orders governing the disclosure of confidential information and documents, pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, ¹⁵ Section 4 of the Freedom of Information Act, ¹⁶ and authority delegated under Section 0.331 of the Commission's rules. ¹⁷

Consistent with this authority, the Media Bureau has already issued two protective orders for compliance under the *Order*. In addition, the Bureau (and other agency bureaus under similar delegated authorities) have issued letters or public notices to provide similar clarification both for merger conditions and non-merger-related Commission rules and orders. In fact, some of these clarifications have included changes to existing processes. The clarifications requested here, in contrast, simply give voice to steps that are inherent in the plain language and structure of the *Order* and necessary to achieve and facilitate its intended purposes.

In addition to the Media Bureau's delegated authority, the *Order* itself expressly provides for initial review by the Media Bureau of arbitration awards in disputes arising under the Online Programming Conditions and other provisions.¹⁹ This further supports the appropriateness of the Media Bureau providing clarification on disclosure requirements, confidential submissions, and other aspects of these conditions.

For all of these reasons, the Media Bureau should provide the requested clarification and issue a Third Protective Order as proposed by Comcast and NBCUniversal. Doing so will serve the interests of OVDs, peer programmers, and NBCUniversal. It will also promote the public interest by ensuring

¹⁵ 47 U.S.C. §§ 154(i), 310(d).

¹⁶ 5 U.S.C. § 552(b)(4).

¹⁷ 47 C.F.R. § 0.331.

¹⁸ See, e.g., FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance with Open Internet Transparency Rule, Public Notice, 26 FCC Rcd. 9411 (OGC, EB 2011) (providing guidance on specific methods of disclosure that will be considered to comply with the transparency rule adopted in the Commission's Open Internet proceeding); Media Bureau Clarifies 2009 Biennial Filing Requirements for Ownership Report (Form 323), Public Notice, 25 FCC Rcd. 7986 (MB 2010) (clarifying that for any assignment or transfer of control application granted during a specific period, the FCC would include as a condition that the proposed assignor/transferor file Form 323 regarding ownership information); Media Bureau Clarifies Issues Concerning Franchise Authority Certification to Regulate Rates, Public Notice, 24 FCC Rcd. 399 (MB 2009) (clarifying the Commission's long-standing rules governing LFAs that seek to regulate basic cable rates charged by new entrants); Letter from Carol E. Mattey, Deputy Chief, Common Carrier Bureau, FCC, to Sandra Wagner, Vice President - Federal Regulatory, SBC Telecommunications, Inc., 15 FCC Rcd. 24479 (CCB 2000) (answering several questions regarding the performance tests used to determine if SBC's ILECs were providing the same quality of service to CLECs as the ILECs provided to themselves, as required by the SBC/Ameritech merger order); Letter from Dorothy T. Attwood, Chief, Common Carrier Bureau, FCC, to Michael Glover, Senior Vice President and Deputy General Counsel, Verizon Communications, Inc., 15 FCC Rcd. 18327 (CCB 2000) (clarifying that the requirement under the GTE/Bell Atlantic merger order that UNEs be made available in accordance with the FCC's TELRIC pricing rules would not impose an independent obligation should the Supreme Court vacate the TELRIC pricing rules).

See C-NBCU Order, App. A, § VII.E.1.

William T. Lake February 17, 2012 Page 7

that the Benchmark Condition works as the Commission intended. Because NBCUniversal continues to receive requests for programming pursuant to the Benchmark Condition, prompt action by the Media Bureau on this request is warranted.

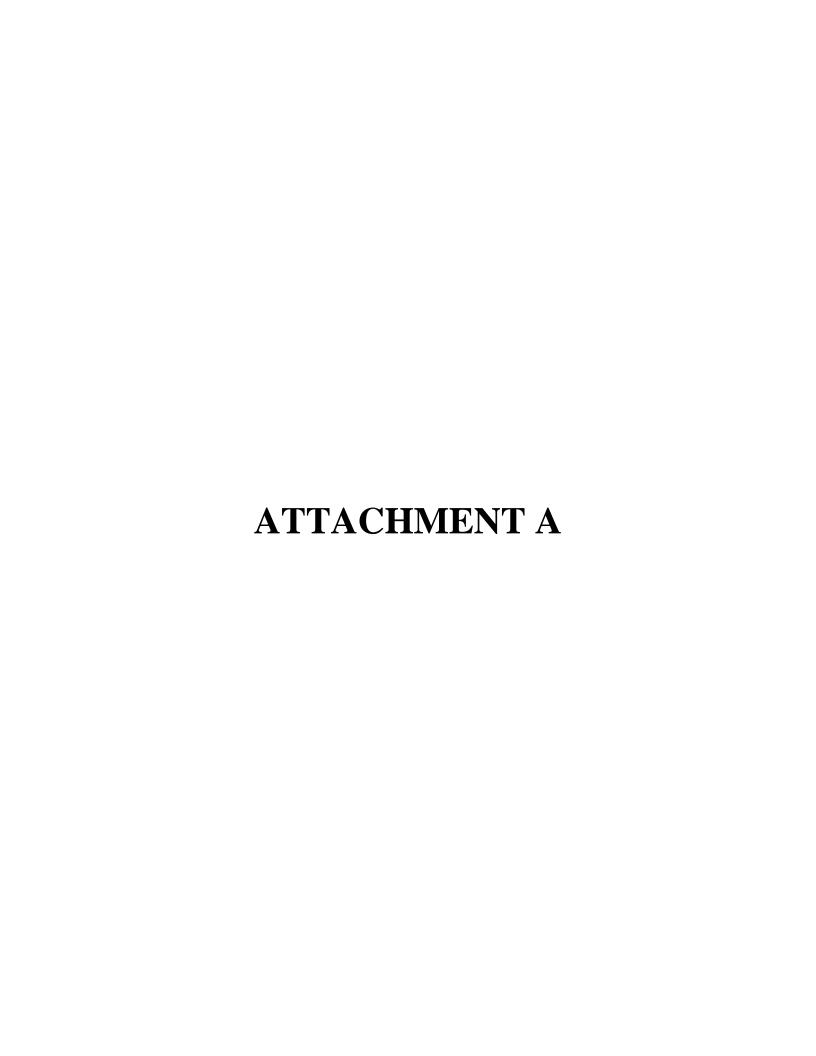
Respectfully submitted,

/s/ David P. Murray

David P. Murray WILLKIE FARR & GALLAGHER LLP 1875 K Street, N.W. Washington, D.C. 20006 (202) 303-1000

Counsel for Comcast Corporation and NBCUniversal Media, LLC

Attachment



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)

THIRD PROTECTIVE ORDER FOR COMPLIANCE

Adopted: February [XX], 2012 Released: February [XX], 2012

By the Chief, Media Bureau:

- 1. On January 20, 2011, the Federal Communications Commission ("FCC" or "Commission") released a Memorandum Opinion and Order in the matter of the Applications of Comcast Corporation ("Comcast"), General Electric Company ("GE"), and NBCUniversal Media, LLC (together with Comcast and GE, the "Applicants") for Consent to Assign Licenses and Transfer Control of Licensees (the "Comcast-NBCUniversal Order"), in which the Commission granted the applications subject to conditions. In the Comcast-NBCUniversal Order, the Commission adopted various provisions relating to online programming, including a "Benchmark Condition" that requires the Applicants to provide a qualified online video distributor ("Requesting OVD") with "comparable programming" on terms that are "economically equivalent" to the terms of an agreement for video programming that satisfies the Benchmark Condition as defined in Appendix A, Part I of the Comcast-NBCUniversal Order (a "Peer Deal").²
- 2. As explained in the accompanying Public Notice,³ the Benchmark Condition cannot operate as intended or effectively without the disclosure to Applicants of the Peer Deal(s) that entitle(s) the OVD to license and display Applicants' programming. Such Peer Deals, as well as the Requesting OVD's initial notice of intent to demand Benchmark Arbitration, contain proprietary and confidential information, and we find that such documents should be made available only pursuant to a protective order. Consequently, the Media Bureau ("Bureau") hereby adopts this Third Protective Order for Compliance ("Protective Order") to (1) require disclosure of a Peer Deal by the Requesting OVD pursuant to the procedures outlined in paragraph 5 of this Protective Order; and (2) ensure that a Peer Deal and the Requesting OVD's initial notice of intent to invoke the Benchmark Condition submitted in

_

See General Electric Company, Transferor, NBC Universal, Inc., and Comcast Corporation, Transferee, Memorandum Opinion and Order, 26 FCC Rcd. 4238 (2011) ("Comcast-NBCUniversal Order").

² *Id.*, App. A, § IV.A.2.b; *see also id.*, App. A, § I.

³ [CITE]

compliance with the Benchmark Condition and this Protective Order are afforded adequate protection.⁴ This Protective Order does not constitute a resolution of the merits concerning whether any information submitted under the Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act ("FOIA") or otherwise.

- 3. *Acknowledgment*. Any person entitled to access to Confidential Documents or Information subject to the Protective Order shall request access pursuant to the terms of the Protective Order and must sign the Acknowledgement of Confidentiality, attached in the Appendix ("Acknowledgment").
- 4. *Definitions*. As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

"Stamped Confidential Document" means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION – SUBJECT TO THIRD PROTECTIVE ORDER FOR COMPLIANCE IN MB DOCKET NO. 10-56 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION," unless the Commission determines, *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to confidential treatment. The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Requesting OVD or another person. By designating a document a "Stamped Confidential Document," a Requesting OVD signifies and represents that it contains information that it believes should be subject to protection under FOIA and the Commission's implementing rules. Stamped Confidential Documents would include a Requesting OVD's notice to NBCUniversal Media, LLC of its intent to invoke the Benchmark Condition and its Peer Deal.

"Confidential Information" means information contained in Stamped Confidential Documents or derived therefrom that is not otherwise available from publicly available sources.

"Counsel" means In-House Counsel and Outside Counsel.

"In-House Counsel" means attorneys employed by the Applicants or an affiliated entity and who are actively engaged in advising and assisting Applicants in the negotiation of a Benchmark licensing agreement and/or the conduct of the OVD Benchmark Condition proceeding at issue. For purposes of serving notices and other documents required by this Protective Order, Applicants' In-House Counsel is Richard Cotton, Executive Vice President and General Counsel, NBCUniversal Media, LLC, 30 Rockefeller Plaza, New York, NY 10112.

This Protective Order governs the initial notice by the OVD and disclosure of the peer deal by the OVD to

public inspection should be clearly and conspicuously labeled 'CONFIDENTIAL, NOT FOR PUBLIC INSPECTION.' This designation should be placed in the upper right-hand corner of each page. If these instructions are not followed, the filer increases the risk for inadvertent disclosure of confidential information."). Moreover, any future disclosure of licensing agreements during the course of an arbitration would be governed by the Model Protective Order, pursuant to which programming agreements are afforded highly confidential treatment. See Comcast-NBCUniversal Order, App. E.

2

the Applicants for purposes of facilitating the Applicants' compliance with the Benchmark Condition. This Protective Order does not allow third parties to gain access to the peer deal. Any subsequent confidential filings with the Commission required under the *Comcast-NBCUniversal Order*, such as a confidential summary of the dispute or submission of final offers, will not be filed pursuant to the terms of the Third Protective Order, but must nonetheless follow the Commission's rules and guidelines regarding confidential submissions. *See* 47 C.F.R. § 0.459; Office of the Secretary, Federal Communications Commission, Guidelines for Filing Paper Documents, *available at* http://transition.fcc.gov/osec/guidelines.html ("Documents containing information to be withheld from

"Outside Counsel" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing the Applicants or an affiliated entity and who are actively engaged in advising and assisting Applicants in responding to a Benchmark licensing agreement and/or the conduct of the OVD Benchmark Condition proceeding at issue. For purposes of serving notices and other documents required by this Protective Order, Applicants' Outside Counsel are Michael Hammer and David Murray, Willkie Farr & Gallagher LLP, 1875 K Street, N.W., Washington, D.C. 20006.

"Business Person" means the business individuals with executive management and licensing negotiation responsibilities within business unit(s) responsible for negotiating the licensing of content via particular business models (or aspects thereof) that are affected by a Benchmark request. Applicants' In-House Counsel shall designate, and identify by title and general area of responsibility, the business persons necessary to have access to the OVD's Peer Deal, on a case-by-case basis, for purposes of analyzing the relevant business model(s), business unit, category or categories of programming, and other terms and conditions of the Peer Deal and responding with a proposal for the licensing of comparable programming. The number of designated Business Persons shall typically range from three (for Benchmark requests involving only one business unit and business model) to six (for Benchmark requests involving multiple business units, business models and/or categories of programming), although Applicants may request disclosure to additional Business Persons as specified in paragraph 5.

- 5. *Initial Submission of and Access to Stamped Confidential Documents*. When the Requesting OVD invokes the Benchmark Condition based on a Peer Deal, the following procedures shall apply:
 - The Requesting OVD shall provide notice to the Applicants of its intent to invoke the Benchmark Condition. Such notice shall identify, in general terms, the kinds of programming that the Requesting OVD is seeking (for example, "library film content," "prior season TV shows," etc.). Such notice must be served by certified U.S. mail or overnight courier, receipt requested, on Applicants' In-House Counsel and Outside Counsel, and shall be filed with the Media Bureau as a Stamped Confidential Document pursuant to the terms and procedures of this Protective Order.
 - Persons necessary to have access to the OVD's Peer Deal and identify them by title and general area of responsibility. In addition, Counsel and Business Persons seeking access to Stamped Confidential Documents or Confidential Information, including the Requesting OVD's Peer Deal, shall execute a copy of the Acknowledgment. Applicants' Counsel shall file the written designations and executed Acknowledgments with the Bureau, on behalf of the Commission, and serve them by certified U.S. mail or overnight courier, receipt requested, on the Requesting OVD within five (5) business days of receiving notice from the OVD. Upon receipt of Applicants' written designations and executed Acknowledgements, the Requesting OVD shall serve a complete and unredacted copy of its Peer Deal by certified U.S. mail or overnight courier, receipt requested, on Applicants' In-House Counsel and Outside Counsel, and shall file two copies of the Peer Deal with the Media Bureau, pursuant to the procedures identified in paragraph 6.
 - The 90-day timeline for negotiations of first-time requests for programming under the Benchmark Condition, *Comcast-NBCUniversal Order*, App. A, Section VII.A.1., shall commence upon Applicants' receipt of the Requesting OVD's Peer Deal.
 - Upon receipt of the Peer Deal, NBCUniversal Media, LLC may request disclosure of the Peer Deal to additional Business Persons by filing with the Media Bureau and serving by certified mail on the OVD (a) a letter specifying the reasons additional disclosure is justified; and (b)

signed Acknowledgments by such additional Business Persons. If the OVD does not object in writing within three (3) business days, the request will be deemed approved. If the OVD objects in writing within three (3) business days, the Media Bureau shall promptly rule on the request (and may grant or deny it in whole or in part).

- 6. Submission of Stamped Confidential Documents. Two copies of each Stamped Confidential Document must be delivered in person to Vanessa Lemmé, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The documents shall be accompanied by a cover letter stating "CONFIDENTIAL INFORMATION SUBJECT TO THIRD PROTECTIVE ORDER FOR COMPLIANCE IN MB DOCKET NO. 10-56 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." Each page of the Stamped Confidential Document shall be stamped with this legend as well.
- 7. Use of Confidential Information. Counsel and Business Persons obtaining access to Confidential Information (including Stamped Confidential Documents) under this Protective Order shall use the information solely for the purpose of responding to requests under the Benchmark Condition of the Comcast-NBCUniversal Order and for the preparation and prosecution of any administrative proceeding before the Commission as delineated in this paragraph and paragraphs 8 and 12, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Confidential Documents or Confidential Information in any decision in this proceeding, it will do so by redacting any Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Confidential Information under this Protective Order.
- 8. Permissible Disclosure. Stamped Confidential Documents may be reviewed by Counsel, and Counsel may disclose Stamped Confidential Documents and other Confidential Information to: (1) outside consultants or experts and their supporting personnel retained for the purpose of assisting Counsel in this proceeding; (2) Business Persons whose review of the Peer Deal is necessary for responding with a proposal for licensing of programming; (3) paralegals or other employees of such Counsel assisting Counsel in this proceeding; (4) employees of such Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (5) employees of third-party contractors performing one or more of the functions set forth in clause 4 of this paragraph. Counsel and Business Persons of the Applicants and the Requesting OVD who have executed Acknowledgments may share the contents of the Stamped Confidential Documents and Confidential Information with one another and with the Commission and its staff. A Requesting OVD's Stamped Confidential Documents and Confidential Information may also be disclosed to employees and Counsel of the Requesting OVD.
- 9. *Non-Disclosure of Stamped Confidential Documents*. Except with the prior written consent of the Requesting OVD, or as provided under this Protective Order, neither a Stamped Confidential Document nor any Confidential Information may be disclosed further.
- 10. Protection of Stamped Confidential Documents and Confidential Information. Persons described in paragraphs 7 and 8 shall have the obligation to ensure that access to Stamped Confidential Documents and Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Stamped Confidential Documents and

Confidential Information are used only as provided in this Protective Order; and (2) unless permitted by the terms hereof, Stamped Confidential Documents are not duplicated except as necessary for filing at the Commission under seal.

- 11. Requests for Additional Disclosure. If any person requests disclosure of Confidential Information outside the terms of this Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's Rules.
- 12. Client Consultation. Nothing in this Protective Order shall prevent or otherwise restrict Counsel or a Business Person from rendering advice to, instructing, or seeking approval from other employees of Applicants in connection with a Benchmark request and in the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents or Confidential Information; *provided*, *however*, that in rendering such advice or instructions, or seeking such approval, and otherwise communicating with such client, Counsel and Business Persons shall not disclose Stamped Confidential Documents or Confidential Information.
- 13. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by Applicants or the Requesting OVD of any privilege or entitlement to confidential treatment of such Confidential Information. Applicants and the Requesting OVD, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by Applicants or a Requesting OVD shall not be deemed a waiver of any privilege or entitlement as long as the Applicants or Requesting OVD takes prompt remedial action.
- 14. Subpoena by Courts, Departments, or Agencies. If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Confidential Documents or Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify the Requesting OVD of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Requesting OVD has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.
- 15. Violations of Protective Order. Should a person who has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Applicants or Requesting OVD. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission; cease and desist orders and forfeitures; and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Applicants or Requesting OVD at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.
- 16. Termination of Proceeding. The provisions of this Protective Order shall terminate upon the expiry of all of the conditions in the Comcast-NBCUniversal Order. Within (1) two weeks after conclusion of any arbitration proceeding or an administrative or judicial review of an arbitration award (including any time for reconsideration or appeal), or (2) two weeks after execution of a program licensing agreement between Applicants and the Requesting OVD that satisfies Applicants' obligations under the Benchmark Condition, persons described by paragraphs 7 and 8 shall destroy or return to the Requesting OVD Stamped Confidential Documents and all copies of the same. No material whatsoever

derived from Stamped Confidential Documents may be retained by any person having access thereto, except Counsel may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information prepared in whole or in part by that party, and one copy of orders issued by the Commission or Bureau containing Confidential Information. All Counsel shall make certification of compliance herewith and shall deliver the same to Counsel for the Requesting OVD not more than three weeks after the Stamped Confidential Documents have been destroyed or returned pursuant to the terms of this paragraph 16. The provisions of this paragraph regarding retention of Stamped Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

17. Authority. This Protective Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake Chief, Media Bureau

APPENDIX Acknowledgment of Confidentiality

MB Docket No. 10-56

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Senior Business Person or consultant to a party or other person described in paragraph 8 of the foregoing Protective Order and that I will not use such information in any other capacity, nor will I disclose such information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Confidential Documents and Confidential Information are used only as provided in the Protective Order; and (2) Stamped Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Confidential Documents or Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at	this day of,
	[Name]
	[Organization]
	[Position]
	[Address]
	[Telephone]