

VIA ECFS

April 27, 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 associated with the two expert economic reports requested by Commission staff.³ As discussed below, the new material for which highly confidential treatment is sought constitutes some of Applicants’ most sensitive business information and is the type of information that has previously been afforded heightened confidential protection.⁴ Disclosure of this material to

¹ 47 C.F.R. § 1.41.

² *In re Applications of General Electric Co. and Comcast Corp. for Consent to the Transfer of Control of Licenses*, Second Protective Order, MB Docket No. 10-56, DA 10-371 ¶ 3 (MB rel. Mar. 4, 2010) (“*Second Protective Order*”).

³ *See 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*, Order, MB Docket No. 10-56, DA 10-662 (MB rel. Apr. 16, 2010).

⁴ *See, e.g., Second Protective Order; In re Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Second Protective Order, 24 FCC Rcd 7182 (WTB 2009); *In re Application of News Corporation and The DIRECTV Group, Inc. and Liberty Media Corporation For Authority to Transfer Control*, Protective Order, 22 FCC Rcd 12797 (MB 2007) (“*News Corp./Liberty Media Second Protective Order*”); *In re AT&T Inc. & BellSouth Corp. Applications for Approval of Transfer of Control*, Order, 21 FCC Rcd 7282 (WCB 2006) (“*AT&T/BellSouth Second Protective Order*”); *In re Adelphia Communications Corp., Time Warner Cable Inc., and Comcast Corp.*, Order, 20 FCC Rcd 20073 (MB 2005) (“*Adelphia Second Protective Order*”); *In re Verizon Communications Inc. & MCI, Inc. Applications for Approval of Transfer of Control*, Order, 20 FCC Rcd 10420 (WCB 2005); *In re Applications for the Transfer of Control of Licenses and Authorizations from Nextel Communications, Inc. & Its Subsidiaries to Sprint Corp.*, Order, 20 FCC Rcd 9280 (WTB 2005); *In re SBC Communications Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, Order, 20 FCC Rcd 8876 (WCB 2005); *News Corp., Gen. Motors Corp., & Hughes Elecs. Corp.*, Order, 18 FCC Rcd 15198 (MB 2003) (“*News/Hughes Second Protective Order*”); *In re EchoStar Comm’cns Corp., Gen.*

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 their businesses and place Applicants at a significant competitive disadvantage. Accordingly, Applicants request that the categories of information and documents identified below be treated as “Highly Confidential Information” under the *Second Protective Order* and made available solely to Outside Counsel of Record, their employees, and their Outside Consultants and experts.⁵

Pursuant to the procedures set forth in the *Second Protective Order*,⁶ 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*. 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.⁷

Applicants seek enhanced protection for the following information and documents:

A. *Comcast's Detailed Financial Data*: Comcast seeks enhanced protection for information related to its (1) costs, including capital expenditures and operating costs, for video-on-demand (“VOD”) and online video distribution technology; and (2) programming budgets for certain of its programming networks. This granular information constitutes “Comcast’s Detailed Financial Data” that is already entitled to enhanced protection under the *Second Protective Order*.⁸

With regard to its VOD and online video distribution cost information, Comcast treats such capital expenditure and operating cost figures as highly confidential and does not generally publicly release such financial information disaggregated by technology in this way. Such cost data disaggregated in this fashion would be of significant commercial value to competing multichannel video programming distributors (“MVPDs”) who offer (or plan to offer) competing VOD and online video distribution services. These cost data also include information that would allow competitors to estimate trends over time associated with Comcast’s expenditures on these

Motors Corp., & Hughes Elecs. Corp., Order, 17 FCC Rcd 7415 (MB 2002) (“*EchoStar/Hughes Second Protective Order*”).

⁵ *Second Protective Order* ¶¶ 3, 5.

⁶ *Id.* ¶ 3.

⁷ Applicants respectfully suggest supplementation of the *Second Protective Order* to cover these additional categories – as opposed to issuance of an additional protective order – so that parties who are already eligible to review Highly Confidential Information may request and have access to the new information and documents without filing additional Acknowledgments. This may make the process more efficient for both the Commission and third parties.

⁸ *Id.* ¶ 6.

technologies. The Commission has previously found such proprietary financial data to be entitled to enhanced protection.⁹

The information related to Comcast's programming budgets for certain Comcast programming networks is also highly sensitive. The information is disaggregated on a network-by-network basis and is current through 2009. With this information, competitors could estimate trends with regard to Comcast's investment in its programming networks, compare the investment trends with changes in the programming on each network over time, and project Comcast's investment and program development strategies into 2010 and beyond. This information could also confer an unfair advantage on MVPDs negotiating for carriage of these networks.

In addition, Applicants will be submitting sensitive financial data, such as profit and loss statements by region and customer-specific financial analysis, that were previously afforded heightened protection as "Comcast's Detailed Financial Data" under the *Second Protective Order*. Disclosure of these financial data to Comcast's competitors or parties with whom Comcast does business would severely injure Comcast's businesses and place Comcast at a significant competitive disadvantage. The Commission has previously extended enhanced protection to such materials and should do so again here.¹⁰

B. Comcast's Detailed Customer Data: Comcast seeks enhanced protection for data on its customers that is disaggregated by Designated Market Area or other geographical unit, service (video, voice, or Internet), and period of time such that competitors could discern trends over time. These data constitute "Comcast's Detailed Customer Data" that are already entitled to enhanced protection under the *Second Protective Order*¹¹ and should be afforded the same treatment here.

C. Comcast's Video Programming and Carriage Agreement Terms and Conditions: Comcast seeks enhanced protection for information relating to the details of its video programming and carriage agreements, including programming rights, retransmission, linear carriage, VOD, and online video distribution agreements, as well as the negotiations associated with such agreements and analyses or summaries thereof. While this material does not fall within an existing category of Highly Confidential Information established in the *Second Protective Order*, it is akin to the category "NBCU Retransmission Consent Agreement Terms and Conditions" which is covered by the *Second Protective Order* and is entitled to enhanced protection for the same reasons.¹²

⁹ See *id.*; see also *News Corp./Liberty Media Second Protective Order*, 22 FCC Rcd at 1297-98; *Adelphia Second Protective Order*, 20 FCC Rcd at 20074.

¹⁰ *News Corp./Liberty Media Second Protective Order*, 22 FCC Rcd at 12798.

¹¹ *Second Protective Order* ¶ 6.

¹² *Id.*

Comcast regularly negotiates with content rights-holders and video programming providers to acquire rights to telecast and distribute a vast array of programming on mutually agreeable financial terms. The details of those agreements and negotiations are highly proprietary, and Comcast maintains them in the strictest confidence. As such, the negotiations and contracts are typically governed by comprehensive confidentiality agreements that prohibit disclosure to third parties. These confidentiality agreements reflect the parties' understanding that their negotiations and contracts contain both parties' highly sensitive business information.

Disclosure of this proprietary information would place Comcast at a significant competitive disadvantage with regard both to its MVPD and video programming competitors as well as MVPDs and programmers with whom Comcast directly negotiates. Access to this information would allow competing distributors and programmers to determine the terms, conditions, and pricing structures by which Comcast was able to obtain these agreements, which would enable them to search for perceived vulnerabilities and act strategically against Comcast just as contracts are nearing expiration. Access to this information would also provide video programmers and distributors a unique insight into Comcast's business model, cost structure, and revenues, thereby placing Comcast at a significant disadvantage in future carriage negotiations. The Commission has previously ruled that this type of information is entitled to enhanced protection and should do so again here.¹³

D. Comcast's Current and Forward-Looking Business Strategies and Plans: Comcast also seeks enhanced protection for information and documents related to its current and forward-looking business strategies, marketing plans, and related documents, including detailed business models, projections, and plans related to its proposed joint venture with GE and NBCU. While this material does not fall within an existing category of Highly Confidential Information established in the *Second Protective Order*, it is highly sensitive and should be afforded enhanced protection. Disclosure of Comcast's future business and marketing plans would place Comcast at a severe competitive disadvantage and confer an unfair advantage on competing MVPDs and video programmers by allowing them to craft their own business and marketing plans in ways that exploit Comcast's businesses. The Commission has repeatedly recognized the sensitive nature of this type of information and provided enhanced protection for current and future business and marketing plans.¹⁴ It should do so again here.

E. Comcast Advertising Sales, Financial, and Operating Results: Comcast seeks enhanced protection for its advertising sales, financial, and operating results. While this material does not fall within a category of Highly Confidential Information established in the *Second Protective Order*, it is akin to the category "NBCU's Advertising Revenue Data" which is covered by the *Second Protective Order* and is entitled to enhanced protection for the same

¹³ See *News Corp./Liberty Media Second Protective Order*, 22 FCC Rcd at 12797-98.

¹⁴ *Id.*; see also *News/Hughes Second Protective Order*, 18 FCC Rcd at 15199; *EchoStar/Hughes Second Protective Order*, 17 FCC Rcd at 7416; *In re TCI Satellite Entertainment, Inc. and PRIMESTAR, Inc.*, Order Adopting Protective Order, 13 FCC Rcd 10927, 10932 (IB 1998) (providing enhanced protection for studies, analyzes, and reports prepared to aid in evaluating the proposed transaction).

reasons.¹⁵ This is sensitive business information that Applicants treat as highly confidential and do not publicly release. Moreover, release of such information would provide competitors with critical insight into Comcast's operations and, when coupled with other publicly available information, would allow parties to reverse-engineer the data to determine Comcast's pricing strategies and forecast pricing for 2010. The Commission has recognized that information revealing a company's pricing strategies is entitled to enhanced confidential treatment and should do so again here.¹⁶

F. NBCU's Video Programming and Carriage Agreement Terms and Conditions: NBCU seeks enhanced protection for information relating to the details of its video programming and carriage agreements, including linear carriage, VOD, and online video distribution agreements, as well as the negotiations associated with such agreements and analyses or summaries thereof. Information related to NBCU's retransmission consent agreements is already entitled to enhanced protection under the *Second Protective Order* under the category "NBCU Retransmission Consent Agreement Terms and Conditions."¹⁷ Moreover, as with Comcast's video programming agreements discussed above in part C, information concerning NBCU's content rights and its deliberations and decisions regarding distribution of its programming is highly proprietary to NBCU, and the release of such information would be severely detrimental to NBCU's competitive interests. Thus, consistent with the enhanced protection provided to NBCU's retransmission consent agreements and negotiations, the Commission should afford enhanced protection to NBCU's video programming and carriage agreements, as well as the negotiations associated with such agreements.

G. NBCU's Current and Forward-Looking Business Strategies and Plans: NBCU also seeks enhanced protection for information and documents related to its current and forward-looking business strategies, marketing plans, and related documents, including detailed business models, projections, and plans related to the proposed transaction with Comcast. As discussed above in part D, while this material does not fall within an existing category of Highly Confidential Information established in the *Second Protective Order*, it is highly sensitive and entitled to enhanced protection as recognized by the Commission in prior cases.¹⁸ Indeed, the disclosure of such information would place NBCU at a severe competitive disadvantage. Thus, consistent with the discussion above, the Commission should extend enhanced protection to NBCU's current and forward-looking business and marketing plans.

H. NBCU's Detailed Financial Data: NBCU seeks enhanced protection for its advertising sales, financial, and operating results. Much of this material falls within a category of Highly Confidential Information established in the *Second Protective Order*, i.e., "NBCU's

¹⁵ *Second Protective Order* ¶ 6.

¹⁶ *Sirius Satellite/XM Satellite*, 22 FCC Rcd at 19924-24; *In re Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless*, 24 FCC Rcd 14559, 14562-63 (WTB 2009).

¹⁷ *Second Protective Order* ¶ 6.

¹⁸ *See supra* footnote 15.

Advertising Revenue Data,” and the Commission should confirm that the additional information is entitled to enhanced protection under that category.¹⁹ The information represents NBCU’s projected advertising sales revenue for 2010 disaggregated by channel, programming genre, and distribution platform. As with the advertising revenue previously submitted, the additional revenue information is highly sensitive, and NBCU carefully guards this information from disclosure. Moreover, given the level of granularity with which this information is presented, disclosure of this information to competing stations or to advertisers or their representatives would allow parties to reverse-engineer the data to determine pricing strategy and forecast pricing for 2010.

In addition to advertising revenue data, NBCU seeks enhanced confidential protection for detailed income, cash flow, operating metrics, and other sensitive financial data. While these data do not fall within an existing category of Highly Confidential Information established in the *Second Protective Order*; it is akin to the category “Comcast Detailed Financial Data” which is covered by the *Second Protective Order* and are entitled to enhanced protection for the same reasons.²⁰ These financial details are presented for discrete time periods (e.g., month-by-month), discrete sources (e.g., revenue for a particular Internet video service), are for recent and/or current time periods, and represent some of the company’s most sensitive internal data. Thus, consistent with the discussion above in part A, the Commission should confirm that these additional financial data are entitled to enhanced confidential protection under the *Second Protective Order*.

I. NBCU’s Detailed Online Viewership Information: NBCU seeks heightened protection for detailed information regarding the viewership of video programming online. While these data do not fall within an existing category of Highly Confidential Information established in the *Second Protective Order*, the information is highly sensitive business information that NBCU does not make publicly available and protects from disclosure through a comprehensive confidentiality agreement. These data include detailed information regarding each NBCU program viewed online, the type of program, whether it was a Web-exclusive, the number of times each program was viewed, the total length of each program, and the advertising model associated with each program. Disclosure of this information would give NBCU’s competitors information with which they could determine viewership volume and patterns for each NBCU program broadcast online and use that information to strategically target their own programming and advertising models based on this detailed insight into viewers’ interest in NBCU programming. NBCU, therefore, asks the Commission to afford heightened protection to this detailed viewership information.

In sum, consistent with longstanding Commission precedent, Applicants respectfully request that the Commission confirm that the specific categories of information and documents discussed herein be treated as “Highly Confidential Information” under the *Second Protective Order* and made available solely to Outside Counsel of Record, their employees, and *bona fide*

¹⁹ *Id.*

²⁰ *Id.*

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 C through I 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.²¹

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

Respectfully submitted,

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²¹ 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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