

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comcast Cable Communications, LLC	)	MB Docket No. 12-152, CSR-8649-E
	)	MB Docket No. 12-159, CSR-8650-E
	)	MB Docket No. 12-160, CSR-8651-E
Petitions for Determination of Effective	)	MB Docket No. 12-161, CSR-8652-E
Competition in Communities in New Jersey	)	MB Docket No. 12-164, CSR-8655-E
	)	MB Docket No. 12-165, CSR-8656-E
	)	MB Docket No. 12-166, CSR-8657-E
	)	MB Docket No. 12-180, CSR-8668-E
	)	MB Docket No. 12-183, CSR-8671-E
	)	MB Docket No. 12-190, CSR-8675-E
	)	

**ORDER**

**Adopted: December 20, 2012**

**Released: December 20, 2012**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. For the reasons discussed below, we adopt the Protective Order set forth in Appendix A to ensure that certain confidential information submitted by the Petitioner in the above-captioned proceedings is afforded adequate protection.

**II. BACKGROUND**

2. Comcast Cable Communications, LLC (“Comcast”), on behalf of subsidiaries and affiliates, filed petitions in the above captioned proceedings (“Petitions”), pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules, for a determination that Comcast is subject to effective competition in several communities located in New Jersey. In its attempt to demonstrate that its systems meet the effective competition requirements of Section 623(l)(1)(B) of the Communications Act, Comcast relies upon subscriber data obtained from Verizon New Jersey Inc. (“Verizon”) and from two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”).<sup>1</sup> Comcast sought confidential treatment for the Verizon data.<sup>2</sup>

3. All Petitions are opposed by the Division of Rate Counsel of the State of New Jersey (the “DRC”), which filed substantially identical Motions to Dismiss for all the Petitions. In its Motions to Dismiss, the DRC argues that Comcast’s failure to obtain “an FCC sanctioned protective order” for the

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<sup>1</sup> See Petitions CSR-8649-E, CSR-8650-E, CSR-8651-E, CSR-8652-E, CSR-8655-E, CSR-8656-E, CSR-8657-E, CSR-8668-E, and CSR-8671-E at 5-6; Petition CSR-8675-E at 5-7.

<sup>2</sup> Petitions CSR-8649-E, CSR-8652-E, and CSR-8655-E at 6 n.23, Exh. 4; Petitions CSR-8650-E, CSR-8651-E, CSR-8656-E, CSR-8657-E, CSR-8668-E, CSR-8671-E, and CSR-8675-E at 6 n.24, Exh. 5.

Verizon data makes the Petitions deficient.<sup>3</sup>

4. On December 13, 2012, Verizon filed a letter accompanied by a proposed protective order requesting that the Commission enter a protective order in this proceeding.<sup>4</sup> According to Verizon, the protective order is “intended to facilitate and expedite the review of documents that contain trade secrets and privileged or confidential commercial information.”<sup>5</sup> Verizon explains that allowing the information to become publicly available would be competitively harmful.<sup>6</sup>

### III. DISCUSSION

5. Based on the representations made by Verizon, we conclude that a Protective Order is needed to provide enhanced confidential treatment for certain information submitted in these proceedings. Verizon explains that the information sought to be protected is competitively sensitive and that additional protection is warranted so that such information is closely guarded and not made available publicly. Accordingly, we adopt the Protective Order set forth in Appendix A. Any party seeking access to highly confidential documents subject to this Protective Order shall request access pursuant to the terms of the Protective Order and must sign the Declaration provided as Attachment A to this Protective Order.

6. In addition to Paragraphs 3 and 12 of the attached Protective Order, we clarify that a party filing documents with the Commission that contain Confidential Information subject to the Protective Order (“Confidential Filing”) must file one copy of the Confidential Filing in paper with the Commission and, where feasible, electronically file a copy of the Confidential Filing in redacted form (“Redacted Confidential Filing”) in the Electronic Comment Filing System (ECFS) in each of the dockets for the above captioned proceedings. A Confidential Filing must be accompanied by a cover letter stating: “**CONTAINS CONFIDENTIAL INFORMATION – DO NOT RELEASE – SUBJECT TO PROTECTIVE ORDER IN COMCAST CABLE COMMUNICATIONS, LLC, FILE NOS. CSR-8649-E, CSR-8650-E, CSR-8651-E, CSR-8652-E, CSR-8655-E, CSR-8656-E, CSR-8657-E, CSR-8668-E, CSR-8671-E, CSR-8675-E.**” Redacted Confidential Filings must also be accompanied by a cover letter stating: “**REDACTED – FOR PUBLIC INSPECTION,**” and the cover letter should also state that the Submitting Party is filing an unredacted version of such documents.

7. We also dismiss the DRC’s Motions to Dismiss. Those motions are solely concerned with Comcast’s failure to submit the Verizon data pursuant to a protective order, which is cured by adoption of the Protective Order herein. Therefore, the motions are moot and can be dismissed.

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<sup>3</sup> Division of Rate Counsel of the State of New Jersey Motions to Dismiss, MB Docket Nos. 12-152, 12-159, 12-160, 12-161, 12-164, 12-165, 12-166, 12-180, 12-183, 12-190 at 1-2.

<sup>4</sup> Letter from Maggie M. McCready, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 13, 2012) at 1, filed in MB Docket Nos. 12-152, 12-159, 12-160, 12-161, 12-164, 12-165, 12-166, 12-180, 12-183, 12-190.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

**IV. ORDERING CLAUSES**

8. Accordingly, we **ADOPT AND ISSUE** the Protective Order attached at APPENDIX A pursuant to Sections 4(i), 4(j), and 628 of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j) and 548, Section 0.457(d) and 76.1003(k) of the Commission's rules, 47 C.F.R. §§ 0.457(d) and 76.1003(k), and Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and such Protective Order is effective upon its adoption.

9. Further, **IT IS ORDERED** that the Motions to Dismiss filed in the captioned proceedings by the Division of Rate Counsel of the State of New Jersey **ARE DISMISSED**.

10. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>7</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>7</sup> 47 C.F.R. § 0.283.

**APPENDIX A**

In the Matter of	)	
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	)	MB Docket No. 12-190, CSR-8675-E
	)	

**PROTECTIVE ORDER**

1. This Protective Order is intended to facilitate and expedite the review of documents that contain claimed trade secrets and claimed privileged or confidential commercial information. It establishes the manner in which “Confidential Information,” as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

2. *Definitions.*

a. Authorized Representative. “Authorized Representative” shall have the meaning set forth in Paragraph 7.

b. Commission. “Commission” means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. Confidential Information. “Confidential Information” means (i) information submitted to the Commission by the Petitioner in the above-referenced proceedings that has been provided to Petitioner by the Submitting Party and which the Submitting Party has claimed in good faith constitutes trade secrets or commercial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4); and (ii) information submitted to the Commission by the Petitioner in the above-referenced proceedings, which the Submitting Party has claimed in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information. Confidential Information includes additional copies of, notes, and information derived from Confidential Information, which includes source documents or data.

- d. Acknowledgment. “Acknowledgment” means Attachment A to this Protective Order.
- e. Reviewing Party. “Reviewing Party” means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.
- f. Submitting Party. “Submitting Party” means a person or entity that seeks confidential treatment of Confidential Information relied upon by any Party pursuant to this Protective Order.
- g. Petitioner. “Petitioner” means the person or entity that submits or has submitted to the Commission a petition pursuant to 47 C.F.R. §76.907 in the above-referenced proceedings seeking a determination of “effective competition” in one or more communities identified in the petition.

2.1 *Claim of Confidentiality*. Any Party may designate information as “Confidential Information” consistent with the definition of that term in Paragraph 2 of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.459 and 0.461, determine that all or part of the information claimed as “Confidential Information” is not entitled to such treatment. Any party may contest the claim of confidentiality of information submitted in the proceeding.

3. *Procedures for Claiming Information as Confidential*. A version of a petition containing Confidential Information shall be filed by hand with the Commission and shall bear on each page in bold print, “**CONFIDENTIAL NOT FOR PUBLIC INSPECTION**” A redacted version of that same petition containing all non-confidential information shall be filed electronically with the Commission and shall bear on each page in bold print “**REDACTED – FOR PUBLIC INSPECTION.**”

4. *Storage of Confidential Information at the Commission*. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

5. *Access to Confidential Information*. Confidential Information shall only be made available to Commission staff, Commission consultants and to counsel to the Reviewing Parties, or if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to a Reviewing Party or such other designated person designated by the Reviewing Party may obtain access to Confidential Information, counsel, or such other designated person must execute the attached Acknowledgment. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement the scope of which includes the Confidential Information, or if they execute the attached Acknowledgment.

6. *Disclosure*. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of Paragraph 7 of this Protective Order only

after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Acknowledgment.

7. *Authorized Representatives shall be limited to:*

a. Subject to Paragraph 7.d, counsel for the Reviewing Parties to this proceeding, including in-house counsel, actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;

b. Subject to Paragraph 7.d, specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; and

c. Subject to Paragraph 7.d., any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper; except that,

d. disclosure shall be prohibited to any persons in a position to use the Confidential Information for competitive commercial or business purposes, including persons involved in competitive decision-making, which includes, but is not limited to, persons whose activities, association or relationship with the Reviewing Parties or other Authorized Representatives involve rendering advice or participating in any or all of the Reviewing Parties', Associated Representatives' or any other person's business decisions that are or will be made in light of similar or corresponding information about a competitor.

8. *Inspection of Confidential Information.* Confidential Information shall be maintained by Petitioner (on behalf of Submitting Party) for inspection.

9. *Copies of Confidential Information.* Petitioner (on behalf of Submitting Party), shall provide a copy of the petition containing Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page, except that Requesting Parties that are governmental entities shall be provided an unredacted copy of the petition at no cost. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in the applicable proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Petitioner and/or Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly and fully secured from access by unauthorized persons at all times.

10. *Filing of Acknowledgment.* Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the attached Acknowledgment for each Authorized Representative within five (5) business days after the attached Acknowledgment

is executed, or by any other deadline that may be prescribed by the Commission.

11. *Use of Confidential Information.* Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

12. *Pleadings Using Confidential Information.* Petitioner and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. A version of any pleading containing Confidential Information submitted to the Commission shall be filed by hand and shall bear on each page in bold print, “**CONFIDENTIAL NOT FOR PUBLIC INSPECTION.**” A redacted version of any such pleading submitted pursuant to Paragraph 12 of this Order, containing all non-confidential information submitted to the Commission shall be filed electronically and shall bear on each page in bold print “**REDACTED – FOR PUBLIC INSPECTION;**” and

b. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Petitioner, and those Reviewing Parties that have signed the attached Acknowledgment. Such confidential portions shall be served under seal or as specified in Paragraph 12, as applicable, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Petitioner or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notations required by this Paragraph 12 are not removed.

13. *Violations of Protective Order.* Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such 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 attorneys from practice before the Commission, forfeitures, cease and desist orders, 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 Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

14. *Termination of Proceeding.* Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall, at the direction of the Submitting Party, destroy or return to the Petitioner all Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party. Any confidential information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with Paragraphs 9 and 11 of this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

15. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Petitioner or Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (i) agree not to assert any such waiver; (ii) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (iii) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of the privilege.

16. *Additional Rights Preserved.* The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

17. *Effect of Protective Order.* This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Acknowledgment, and the Petitioner.

18. *Authority.* This Protective Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j) and 47 C.F.R. § 0.457(d).

**ATTACHMENT A**

**ACKNOWLEDGMENT OF CONFIDENTIALITY**

**MB Docket Nos. 12-152, 12-159, 12-160, 12-161, 12-164, 12-165, 12-166,  
12-180, 12-183, 12-190**

I hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Federal Communications Commission in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding.

I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

I am not in a position to use the Confidential Information for competitive commercial or business purposes, including competitive decision-making, and that my activities, association or relationship with the Reviewing Parties, Authorized Representatives, or other persons does not involve rendering advice or participating in any or all of the Reviewing Parties', Associated Representatives' or other persons' business decisions that are or will be made in light of similar or corresponding information about a competitor.

Executed this \_\_ day of \_\_\_\_\_, 201\_.

Signed: \_\_\_\_\_

[Print Name]

[Position]

[Firm]

[Address]

[Telephone]