

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

In the Matter of)	
)	
DIRECTV, LLC; AT&T Services, Inc.,)	
)	
Complainants,)	
)	
v.)	
)	
Deerfield Media, Inc.; Deerfield Media (Port)	
Arthur) Licensee, LLC; Deerfield Media)	
(Cincinnati) Licensee, LLC; Deerfield Media)	
(Mobile) Licensee, LLC; Deerfield Media)	
(Rochester) Licensee, LLC; and Deerfield Media)	
(San Antonio) Licensee, LLC; GoCom Media of)	
Illinois, LLC; Howard Stirk Holdings, LLC; HSH)	MB Docket No. 19-168
Flint (WEYI) Licensee, LLC; and HSH Myrtle)	
Beach (WWMB) Licensee, LLC; Mercury)	CSR-8979-C
Broadcasting Company, Inc.; MPS Media of)	
Tennessee Licensee, LLC; MPS Media of)	
Gainesville Licensee, LLC; MPS Media of)	
Tallahassee Licensee, LLC; MPS Media of)	
Scranton Licensee, LLC; Nashville License)	
Holdings, LLC; KMTR Television, LLC; Second)	
Generation of Iowa, LTD; Waitt Broadcasting,)	
Inc.,)	
)	
Defendants.)	
)	
Request for Enhanced Confidential Treatment)	

ORDER

Adopted: 9 July 2019

Released: 9 July 2019

By the Chief, Media Bureau:

I. INTRODUCTION AND DISCUSSION

1. In the attached Protective Order, we set forth procedures to (i) limit access to proprietary or confidential information that may be filed in this proceeding, and (ii) more strictly limit access to certain particularly competitively sensitive information, which, if released to competitors or those with whom the Complainant or Defendants do business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. The information the Complainant and Defendants submit, and any information we request as relevant and material to the issues raised by the complaint constitute the record on which the Commission must base its determination of whether to grant or deny

the complaint. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in the attached Protective Order allows appropriate representatives to do so while also protecting competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the interests involved, we conclude that these procedures serve the public interest and adopting them “best conduce[s] to the proper dispatch of the Commission’s business and to the ends of justice.”¹

II. ORDERING CLAUSES

2. Accordingly, we **ADOPT AND ISSUE** the Protective Order attached as APPENDIX A pursuant to Sections 4(i), 4(j), and 616 of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j) and 537, Section 0.457(d) of the Commission’s rules, 47 C.F.R. § 0.457(d), 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.

3. This action is taken pursuant to authority delegated by Section 0.283 of the Commission’s rules.²

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

¹ 47 U.S.C. § 154(j).

² 47 C.F.R. § 0.283.

APPENDIX A

This Protective Order (“Order”) is intended to facilitate and expedite the review of documents and/or pleadings submitted in the above-captioned proceeding that contain trade secrets and commercial or financial information that is privileged or confidential. It reflects the manner in which “Highly 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 Highly Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (“FOIA”) or other applicable law or regulation, including 47 C.F.R. § 0.442.

1. Definitions.

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

b. Declaration. “Declaration” means Attachment A to this Order.

c. Highly Confidential Information. “Highly Confidential Information” means the data and other information contained in Stamped Highly Confidential Documents or quoted/derived therefrom that is not otherwise available from publicly available sources or is specifically authorized by the Media Bureau based on a letter specifically describing the information and explaining the need for protection.

d. Outside Counsel of Record. “Outside Counsel of Record” means the attorneys representing Complainants DIRECTV, LLC and AT&T Services, Inc. (collectively, “AT&T”) (and their successors) and the various Defendants (and their successors)* in this proceeding. For the avoidance of doubt, Outside Counsel of Record shall exclude any employee of either AT&T or the various Defendants and also does not include other attorneys at the same firm as Outside Counsel of Record so long as those attorneys were not involved in this proceeding and an appropriate ethical wall is created to prevent the sharing of information between attorneys involved in this proceeding and other attorneys at that firm.

e. Stamped Highly Confidential Document. “Stamped Highly Confidential Document” means, to the extent between AT&T and any broadcaster or between any Defendant and any MVPD, any retransmission consent agreement, retransmission consent offer, document exchanged in connection with retransmission consent negotiations, or document containing descriptions of oral statements made during such negotiations, or any part of the foregoing, including any document containing quotations from any of the foregoing, descriptions of particular contents of the foregoing, or specific information derived therefrom, 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) “**HIGHLY CONFIDENTIAL INFORMATION – Outside Counsel of Record Only**”. The term “document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By

* The Defendants in this proceeding are Deerfield Media, Inc., Deerfield Media (Port Arthur) Licensee, LLC, Deerfield Media (Cincinnati) Licensee, LLC, Deerfield Media (Mobile) Licensee, LLC, Deerfield Media (Rochester) Licensee, LLC, Deerfield Media (San Antonio) Licensee, LLC, GoCom Media of Illinois, LLC, Howard Stirk Holdings, LLC, HSH Flint (WEYI) Licensee, LLC, HSH Myrtle Beach (WWMB) Licensee, LLC, KMTR Television, LLC, Mercury Broadcasting Company, Inc., MPS Media of Tennessee Licensee, LLC, MPS Media of Gainesville Licensee, LLC, MPS Media of Tallahassee Licensee, LLC, MPS Media of Scranton Licensee, LLC, Nashville License Holdings, LLC, Second Generation of Iowa, LTD, and Waitt Broadcasting, Inc.

designating a document a “Stamped Highly Confidential Document,” a Submitting Party signifies that it contains information that the Submitting Party determines in good faith should be subject to protection under the FOIA, the Commission’s implementing rules, this Protective Order, and the accompanying Order.

f. Submitting Party. “Submitting Party” means AT&T or Defendants to the extent they seek confidential treatment of Highly Confidential Information pursuant to this Order.

2. Claim of Confidentiality. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.459 & 0.461, determine that all or part of the information claimed as “Highly Confidential Information” pursuant to the definitions in paragraph 1 of this Order is not entitled to such treatment, but prior to making such a determination, the Commission shall afford the Submitting Party notice and opportunity to comment. Any party that did not file the Highly Confidential Information but that has completed the attached Declaration shall have three (3) business days from the date it receives notice that such Highly Confidential Information has been filed to file a petition opposing such Highly Confidential treatment. The Submitting Party shall have three (3) business days from the date it receives the other party’s opposition to file its reply to such opposition.

3. Storage of Highly Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Highly Confidential Information is submitted shall place the Highly Confidential Information in a non-public file. Highly 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 Highly 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.

4. Permissible Disclosure. Subject to the requirements of paragraph 7, Stamped Highly Confidential Documents may be reviewed by Outside Counsel of Record. Subject to the requirements of paragraph 7, Outside Counsel of Record may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Outside Counsel of Record in this proceeding, provided that such outside consultants or experts are not employees of AT&T or Defendants and are not involved in the analysis underlying the business decisions of any competitor or business counterparty (including broadcasters and MVPDs) of the Submitting Party nor participate directly in those business decisions; (2) paralegals or other employees of such Outside Counsel of Record not described in clause 3 of this paragraph 4 assisting Outside Counsel of Record in this proceeding; and (3) employees of such Outside Counsel of Record 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. Individuals who have obtained access to Stamped Highly Confidential Documents and Highly Confidential Information in accordance with the provisions of this paragraph 4 and paragraph 7 may discuss and share the contents of such Stamped Highly Confidential Documents and Highly Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 4 and paragraph 7, and with the Commission and its staff. Disclosure is also permissible to court reporters and stenographers, pursuant to 47 C.F.R. § 76.9(c)(v). Except with the prior written consent of the relevant Submitting Party, or as otherwise provided under this Protective Order, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed by persons executing the attached Declaration to any person other than the Commission and its staff.

5. Protection of Stamped Highly Confidential Documents and Highly Confidential Information. Persons described in paragraph 4 shall have the obligation to ensure that access to Stamped Highly Confidential

Documents and Highly Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10 below.

6. Prohibited Copying. If, in the judgment of a Submitting Party, a document contains information so sensitive that it should not be copied by anyone, even given its designation as Highly Confidential Information, it shall bear the additional legend “Copying Prohibited,” and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

7. Procedures for Obtaining Access to Stamped Highly Confidential Documents and Highly Confidential Information. In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 4, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the Declaration in Attachment A and file it with the Commission and serve it upon the Submitting Party through their Outside Counsel of Record. Unless otherwise agreed to by the Submitting Party, any person other than Outside Counsel of Record who is permitted access to Stamped Highly Confidential Documents and Highly Confidential Information pursuant to paragraph 4 must serve the executed Declaration upon the Submitting Party at least three (3) business days prior to such person’s reviewing or having access to such Submitting Party’s Stamped Highly Confidential Documents or Highly Confidential Information. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents or Highly Confidential Information to any such persons. Any objection must be filed at the Commission and served on Outside Counsel of Record representing, retaining, or employing such person as promptly as practicable after receipt of the relevant Declaration. Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. A Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party’s Outside Counsel of Record.

8. Requests for Additional Disclosure. If any person requests disclosure of Highly Confidential Information outside the terms of this Protective Order, that request will be treated in accordance with Sections 0.442 and 0.461 of the Commission’s rules, 47 C.F.R. §§ 0.442, 0.461.

9. Use of Highly Confidential Information. Highly Confidential Information (including Stamped Highly Confidential Documents under this Protective Order) shall be used solely for the preparation and conduct of this proceeding as delimited in this paragraph and paragraphs 4, 10, and 11 herein, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not be used by any person granted access under this Protective Order for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings. 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 Highly Confidential Information nor otherwise learned of its contents. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly 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 Highly Confidential Information under this Protective Order.

10. Pleadings Using Highly Confidential Information. Persons described in paragraph 4 may, in any pleadings that they file in this proceeding, reference the Stamped Highly Confidential Documents and Highly Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Highly Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal; to the extent a document contains both Highly Confidential Information and non-Highly Confidential Information, the Submitting Party shall designate the specific portions of the document claimed to contain Highly Confidential Information and shall also submit a redacted version not containing Highly Confidential Information.

b. The portions of pleadings containing or disclosing Highly Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order.

c. Each page of any party's filing that contains or discloses Highly Confidential Information subject to this Order must be clearly marked: **"HIGHLY CONFIDENTIAL INFORMATION – Outside Counsel of Record Only."**

d. The confidential portion(s) of the pleading, shall be served upon the Secretary of the Commission and the Media Bureau. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party as set forth in paragraph 2). A Submitting Party filing a pleading containing Highly Confidential Information shall also file two redacted copies of the pleading containing no Highly Confidential Information, which copy shall be placed in the Commission's public files, or shall otherwise electronically file a redacted version of the pleading on the public docket pursuant to Commission rules. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Media Bureau so requests. Any courtesy copies shall be submitted under seal.

11. Client Consultation. Nothing in this Protective Order shall prevent or otherwise restrict Outside Counsel of Record from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Highly Confidential Documents or Highly Confidential Information; provided, however, that in rendering such advice and otherwise communicating with such client, Outside Counsel of Record shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

12. Violations of Protective Order. Should a person that has properly obtained access to Highly Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Highly 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 Highly 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 Outside Counsel of Record from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information or other information subject to a protective order 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 person using Highly Confidential Information in a manner not authorized by this Protective Order.

13. Termination of Proceeding. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two (2) weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), persons described in paragraph 4 shall destroy or return to the Submitting Party the relevant Stamped Highly Confidential Documents 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 Stamped Highly Confidential Documents have been retained by any person having access thereto, except that Outside Counsel of Record may retain, under the continuing strictures of this Protective Order, two (2) copies of pleadings (one of which may be in electronic format) submitted on behalf of any party. Any Highly Confidential Information contained in any copies of pleadings retained by Outside Counsel of Record or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with this Protective Order unless such Highly Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction. The provisions of this paragraph 13 regarding the retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

14. No Waiver of Confidentiality. Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use Highly Confidential Information to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Highly Confidential Information shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

15. 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 Highly Confidential Documents or Highly Confidential Information that a person has obtained under terms of this Protective Order, such person shall promptly notify each Submitting Party 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 Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

16. Additional Rights Preserved. The entry of this 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 persons executing the attached Declaration to request further or renewed disclosure of Highly Confidential Information.

17. Limitations on Outside Counsel of Record. Outside Counsel of Record will not represent AT&T (or its successors) or Defendants (or their successors) in retransmission consent negotiations between AT&T (or its successors) and any of the Defendants (or their successors) for a period of four (4) years following the conclusion of this proceeding.

18. Effect of Protective Order. This Order constitutes an Order of the Commission and an agreement between AT&T, the Defendants, and any persons executing the attached Declaration and the Submitting Party.

19. Authority. This Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j); 47 C.F.R. § 76.9(d), and 47 C.F.R. § 0.457(d) and Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

ATTACHMENT A**DECLARATION**

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and I understand it. I agree to be bound by its terms pertaining to the treatment of Highly Confidential Information submitted by parties to this proceeding and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by the Protective Order.

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 public interest organization), I acknowledge specifically that my access to any Highly Confidential Information obtained as a result of the Protective Order is due solely to my capacity as (1) Outside Counsel of Record or (2) other person described in paragraph 4 of the foregoing Protective Order, and that I will not use such Highly Confidential Information in any other capacity; nor will I disclose such Highly Confidential Information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

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 between the undersigned and the Submitting Party.

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

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(email) _____

(date) _____