

**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	)	

**REPLY TO AMERICAN CABLE ASSOCIATION’S  
OPPOSITION TO JOINT OBJECTION TO DISCLOSURE OF  
CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION**

On March 25, 2010, pursuant to the Protective Order<sup>1</sup> and the Second Protective Order<sup>2</sup> in the above-captioned proceeding, Comcast Corporation, General Electric Company, and NBC Universal, Inc. (collectively “Applicants”) filed a Joint Objection to the disclosure of Applicants’ Confidential and Highly Confidential Information to Matthew M. Polka, the President and Chief Executive Officer of the American Cable Association (“ACA”), and Ross J. Lieberman, ACA’s Vice President of Government Affairs.<sup>3</sup> On April 2, 2010, ACA filed an Opposition to the Joint

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<sup>1</sup> *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, Protective Order, DA 10-370 ¶ 7 (rel. Mar. 4, 2010) (“First Protective Order”).

<sup>2</sup> *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, Second Protective Order, DA 10-371 ¶ 4 (rel. Mar. 4, 2010) (“Second Protective Order”).

<sup>3</sup> *See Comcast Corporation, General Electric Company, and NBC Universal, Inc., Joint Objection to Disclosure of Confidential and Highly Confidential Information*, MB Docket No. 10-56 (Mar. 25, 2010) (“Joint Objection”).

Objection<sup>4</sup> that provided additional information about Mr. Lieberman and withdrew Mr. Polka's requests for access to Applicants' Confidential and Highly Confidential Information.

Based on the information provided in ACA's Opposition that demonstrates that Mr. Lieberman serves as In-House Counsel for ACA, Applicants hereby withdraw their objection to disclosure of Confidential Information to Mr. Lieberman pursuant to the First Protective Order. Accordingly, Applicants will promptly make available to Mr. Lieberman the appropriate Confidential version of the economic report authored by Drs. Mark Israel and Michael Katz, pursuant to the terms of the First Protective Order.

However, Applicants renew their objection to disclosure of Highly Confidential Information to Mr. Lieberman pursuant to the Second Protective Order. Having established that Mr. Lieberman is In-House Counsel under the First Protective Order, ACA cannot reasonably also claim that Mr. Lieberman is Outside Counsel for purposes of the Second Protective Order. Indeed, the key difference between the First and Second Protective Orders is that the Second Protective Order "limits access to [Highly Confidential] materials to Outside Counsel of Record, their employees, and Outside consultants and experts whom they retain to assist them in this proceeding."<sup>5</sup> Put another way, the Second Protective Order expressly removes In-House Counsel from the categories of individuals entitled to access the protected information.

Applicants recognize that there is an exception for attorneys representing non-commercial parties.<sup>6</sup> But Applicants believe it is unlikely that the Commission intended this exception to apply to a trade association like ACA whose members are direct competitors and/or

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<sup>4</sup> See American Cable Association, Opposition to Joint Objection to Disclosure of Confidential and Highly Confidential Information, MB Docket No. 10-56 (Apr. 2, 2010) ("ACA Opposition").

<sup>5</sup> Second Protective Order ¶ 3.

<sup>6</sup> See *id.* ¶ 5.

entities that routinely negotiate and enter into contracts with Applicants.<sup>7</sup> Because of the closeness of the relationship between ACA and its members, Mr. Lieberman is not sufficiently removed from ACA members' competitive decision-making processes to be granted access to very sensitive Highly Confidential Information.

Mr. Lieberman has asserted that his "responsibilities include assisting in the development and implementation of all legislative and regulatory efforts on matters that impact ACA's membership" and that he "oversee[s] the day-to-day management of all regulatory matters for the trade association, which includes the development of policy positions, the preparation of filings, and representing the association before the federal agencies, including the FCC."<sup>8</sup> As part of this advocacy, it is likely that Mr. Lieberman discusses sensitive competitive issues with the members on whose behalf he advocates. Allowing Mr. Lieberman access to Highly Confidential Information would frustrate the purposes of the Second Protective Order and create a significant risk that Applicants' most sensitive information could be used to cause Applicants competitive harm.

As noted in the Joint Objection, limiting Mr. Lieberman's access to Highly Confidential Information will not prejudice in any way ACA's ability to participate fully in this proceeding.<sup>9</sup> On behalf of ACA, four other individuals, including lawyers from two outside law firms and an

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<sup>7</sup> See *Consumers, Competition, and Consolidation in the Video and Broadband Market Before the S. Comm. on Commerce, Sci., and Transp.*, 111<sup>th</sup> Cong. (Mar. 11, 2010) (Written Statement of Colleen Abdoulah, President and CEO, WOW!) (noting that ACA's members "are consumers of content controlled by Comcast and NBC Universal . . . . More specifically, all ACA members purchase national programming from Comcast and NBC Universal; more than 100 purchase programming from Comcast's RSNs; and, more than 20 purchase programming both from a Comcast RSN and a NBC Universal O&O television station in the same market. Moreover, in addition to WOW!, more than 35 ACA members compete directly against Comcast's cable systems . . . .").

<sup>8</sup> See ACA Opposition, Ex. 1, ¶¶ 5, 7 (Decl. of Ross J. Lieberman).

<sup>9</sup> See Joint Objection at 3.

expert economist, have signed the Acknowledgments for both Protective Orders and have already been given access to Applicants' Confidential and Highly Confidential Information.<sup>10</sup>

For the foregoing reasons, Applicants request that the Media Bureau deny Mr. Lieberman access to Applicants' Highly Confidential materials submitted pursuant to the Second Protective Order in this proceeding. Granting this request would merely preserve the limitations properly established by the Second Protective Order regarding access to Highly Confidential Information.

Respectfully submitted,

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April 7, 2010

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<sup>10</sup> Applicants sent these materials to ACA's Outside Counsel and Outside Consultant via overnight delivery on March 25, 2010.

## CERTIFICATE OF SERVICE

I, Brien C. Bell, hereby certify that on April 7, 2010, copies of the attached Reply to American Cable Association's Opposition to Joint Objection to Disclosure of Confidential and Highly Confidential Information were served by electronic mail to the following:

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