

# STEPTOE & JOHNSON<sup>LLP</sup>

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June 14, 2010

***VIA HAND DELIVERY***

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

**Re: Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licenses, MB Docket No. 10-56**

Dear Mr. Lake:

DISH Network L.L.C. (“DISH”), through its undersigned counsel, submits this letter to explain more fully how its June 7, 2010 filing in the above-referenced proceeding meets the standard for “Highly Confidential Information” established by the *Second Protective Order*.<sup>1</sup>

The June 7<sup>th</sup> filing contained a declaration from Mr. Vincent Kunz, DISH’s Senior Marketing Manager for Reporting and Analytics, detailing the impact on DISH’s business of a retransmission dispute between DISH and Fisher Broadcasting (“Fisher”), which resulted in DISH’s inability to retransmit several of Fisher’s local affiliates, including a number of major network affiliates, between December 17, 2008 and June 10, 2009. To express that impact, Mr. Kunz considers the effect of that disclosure on DISH’s granular, DMA-specific market share (or penetration) and churn rates. He identifies comparable DMAs based on factors that DISH uses in its marketing analysis. It discusses DISH’s response to the loss of the programming. These are among a multi-channel video programming distributor’s most prized confidences – the family jewels. It is for that reason that the comparable information provided by Comcast in support of its application was likewise submitted under the “Highly Confidential” description of the *Second Protective Order*.

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<sup>1</sup> Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licenses, MB Docket No. 10-56, *Second Protective Order*, DA 10-371, ¶ 5 (rel. March 4, 2010).

Specifically, the paragraphs redacted from the version of the analysis submitted for public inspection meet this standard because they reveal (1) detailed customer data, (2) detailed financial data, or (3) current and forward-looking business strategies and plans. These three categories have all been found by the Commission to be entitled to “Highly Confidential” protection under the *Second Protective Order*.<sup>2</sup>

*Detailed Customer Data.* Paragraphs 6, 10-16, and 17-21 and Exhibits B-F contain customer numbers disaggregated by DMA over periods of time (numbers that would allow competitors to discern trends over time), as well as disaggregated monthly churn rates (similarly allowing identification of trends). These

*Detailed Financial Data.* Paragraphs 22-24 include granular information relating to operating costs incurred by DISH.

*Current and Forward-Looking Business Strategies and Plans.* Paragraphs 7-8 and Exhibit A contain information related to how DISH internally analyzes its marketing plans and operational results – information that is related to DISH’s current and forward-looking business strategies and marketing plans.

All three of these types of data submissions have already been granted protection in this proceeding under the *Second Protective Order*.<sup>3</sup>

If released to DISH’s competitors, this information would allow them to gain a significant advantage in the marketplace., DISH respectfully requests that the Commission confirm that the aforementioned categories of information provided in Mr. Kunz’s declaration will 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* Outside Consultants and experts.

Pursuant to 47 C.F.R. § 0.459(e), DISH requests that the Commission return its submission if its request for protection under the *Second Protective Order* is denied.<sup>4</sup> Please feel free to contact the undersigned if you have any questions concerning the foregoing.

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<sup>2</sup> *Id.* ¶ 6; Letter from William T. Lake, Chief, Media Bureau, FCC, to Michael H. Hammer et al., Counsel for the Applicants, DA 10-365, at 2 (April 30, 2010) (“*Supplement to the Second Protective Order*”).

<sup>3</sup> *Second Protective Order* ¶ 6; *Supplement to the Second Protective Order* at 2.

<sup>4</sup> *See* 47 C.F.R. § 0.459(e).

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Respectfully submitted,

/s/

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