Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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 Media Bureau Seeks Comment on Whether Comcast-NBCU Benchmark Condition Needs Clarification and Whether a Proposed Third Protective Order for Compliance Should be Adopted	))))))))))))))	MB Docket No. 10-56

REQUEST FOR STAY OF MEDIA BUREAU ORDER DA 12-1950

Public Knowledge (PK) supports the request by CBS Corporation, News Corporation, Sony Pictures Entertainment Inc., Time Warner Inc., Viacom Inc., and The Walt Disney Company (the "Content Companies") for a stay of the Media Bureau's (the "Bureau") Order in the above-captioned proceeding, released on December 4, 2012.

The Content Companies are concerned with "the disclosure of their own highly confidential and extremely sensitive business contracts."[1] In other matters before the FCC, PK has criticized *applicants* who have made similar arguments.[2] But the Content Companies here are not applicants before the FCC seeking government approval of a merger or a license transaction. They are non-parties who are rightly

[1] Request for Stay of Media Bureau Order DA 12-1950, at 2 (filed Dec. 18. 2012).
[2] *See, e.g.,* Public Knowledge, Notice of Ex Parte in WT Docket No. 12-4, Proposed Assignment of Licenses to Verizon Wireless from SpectrumCo and Cox TMI Wireless (filed Jan. 12, 2012).

alarmed that one of their competitors, Comcast-NBCU, might be given access to their proprietary commercial information. This alone provides reason enough to grant their request.

But PK supports the request for another reason: The Bureau's Order makes it less likely that online video distributors (OVDs) will be able to take advantage of the Benchmark Condition. The Content Companies' opposition shows that they are likely to take steps to prevent OVDs from disclosing their proprietary information to Comcast-NBCU. This could mean that they will require OVDs to not do business with Comcast-NBCU, or even not sign deals with OVDs in the first place, to prevent their contracts from being used as benchmarks. This undermines the purpose of the Benchmark Condition (in fact, it brings about the opposite of its intended result) as well as calling into question the entire basis of the Merger Decision.[3] A Bureau decision that has the potential to undermine a Commission action plainly requires review, and should be stayed.

The purposes of the Benchmark Condition are thwarted if the Commission allows Comcast-NBCU to use the terms offered by peer programmers to OVDs as a ceiling, beyond which it will not go. It was designed to promote online video distribution, and if, in the absence of its competitors' confidential information, Comcast-NBCU ends up offering an OVD *better* terms than it was able to obtain from

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[3] Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, *Memorandum Opinion and Order*, MB Docket No. 10-56, 26 FCC Rcd 4238 (January 20, 2011).

a peer programmer, that purpose is served.[4] Thus, the Commission should enforce the Benchmark Condition along the lines PK suggested in its comments,[5] rather than weakening it and making it more favorable to Comcast-NBCU, as this Order has done.

Finally, PK appreciates the hard work the Bureau and the Commission have done to craft conditions on the Comcast/NBCU merger and to promote online video competition. But behavioral conditions are notoriously difficult to enforce and the Commission should be wary of attempts by Comcast-NBCU to wait out time-limited conditions by making various procedural and technical arguments. To counter this, the Commission should toll any merger condition while disputes as to its meaning are being heard.

Respectfully submitted,

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PUBLIC KNOWLEDGE

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[4] In the event of a legitimate dispute, as PK argued in its comments, the Commission may set forth procedures whereby redacted peer agreements are reviewed by an independent arbitrator. As this would be a baseball-style arbitration, the arbitrator would pick whichever of the two offers on the table (Comcast-NBCU's or the OVDs) is closest to the peer agreement. This would not necessarily be the terms that are most favorable to the OVD.

[5] Comments of Public Knowledge in MB Docket No. 10-56 (filed April 3, 2012).