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September 26, 2014

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57*

Dear Ms. Dortch:

On September 24, 2014, along with Arthur Burke and Christopher Lynch of Davis Polk & Wardwell LLP (for Comcast); Mia Guizzetti Hayes of Willkie Farr & Gallagher LLP (for Comcast); Matthew Brill and Kory Wilmot of Latham & Watkins LLP (for TWC); and John Flynn of Jenner & Block (for Charter), I met with the staff copied below (Ms. DeNigro and Mr. Rabinovitz participated by telephone) concerning the Commission's public notice issued on September 23, 2014 regarding certain document production issues.¹ The *Document Production Public Notice* seeks comments regarding the concerns and proposals submitted by groups of programmers² and broadcasters.³ The Commission staff has provided a summary of these proposals and we focused on the staff's summary at the meeting.⁴

We began the meeting by emphasizing that we would work diligently to comply with whatever procedures are ultimately adopted by the Commission. Since September 11, 2014, we have been

¹ *Media Bureau Seeks Comment on Issues Raised by Certain Programmers and Broadcasters Regarding the Production of Certain Documents in Comcast-Time Warner Cable-Charter and AT&T-DirecTV Transaction Proceedings*, MB Docket Nos. 14-57 and 14-90, Public Notice, DA 14-1383 (Sept. 23, 2014) ("*Document Production Public Notice*").

² Letter from Mace Rosenstein, Covington & Burling LLP, on behalf of CBS Corporation, Discovery Communications, Scripps Networks Interactive, Inc., Time Warner Inc., Twenty First Century Fox, Inc., Viacom Inc., The Walt Disney Company, and Univision Communications Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57 (Sept. 23, 2014).

³ Letter from LIN Television Corporation, Gray Television, Inc., Nexstar Broadcasting Group, Sinclair Broadcast Group, and The E.W. Scripps Company, to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 14-57 (Sept. 11, 2014); Letter from Rebecca S. Bryan, Raycom Media, to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 14-57 (Sept. 17, 2014).

⁴ Memorandum from Hillary Burchuk, Office of the General Counsel, FCC, to Jonathan Sallet and William Lake, FCC, MB Docket. No. 14-57 (Sept. 23, 2014) ("*Commission Staff Memorandum*").

ready, willing, and able to provide our document productions to the Commission subject to the current *Joint Protective Order* in MB Docket No. 14-57.⁵ Our goal continues to be one that allows for a quick resolution of this matter so that we can make any necessary adjustments to our pending document productions and file them as quickly as possible. We explained that we believe the current protective order is sufficient to protect the confidentiality of the types of materials identified by the programmers and broadcasters. The programmers and broadcasters are correct that documents relating to programming contracts, including the contracts themselves and documents relating to their negotiation, are competitively sensitive and entitled to protection.⁶ Accordingly, we had intended to designate such materials as Highly Confidential under the *Joint Protective Order*. That order requires that individuals who seek access to Highly Confidential materials must certify that they are not involved in “Competitive Decision-Making.”⁷ To the extent that the programmers and broadcasters are concerned that some individuals who have signed certifications under the order may, in fact, be involved in “Competitive Decision-Making,” the proper solution is to raise this with the Commission as a potential violation of the existing order. As an alternative, and out of an abundance of caution, we suggested that the Commission could require parties to the existing order to re-certify that they are not involved in “Competitive Decision-Making,” focusing in particular on the programming agreements at issue, but otherwise keep the existing *Joint Protective Order* in place.

We next turned to the three alternative proposals set forth in the Commission Staff Memorandum. We discussed the first option (“Overall Protections”), whereby the parties would remove “Protected Materials” (as defined therein) from their productions and Commission staff would review the Protected Materials at the Department of Justice (“DOJ”). We noted that it would be relatively easy to identify the “file copies” of affiliation and retransmission consent agreements, as these are centrally stored and occupy a contiguous portion of the parties’ DOJ document productions. It would involve much greater effort and time, however, to identify other copies of such agreements that might be contained elsewhere in the parties’ document productions (e.g., attached to e-mail or memoranda), all drafts of these agreements, and materials “relating to the negotiation of those agreements.” Such negotiating documents are intermingled with other documents throughout the complete sets of documents that will be produced to the Commission, which collectively include millions of documents comprising over ten million pages. Isolating these documents from the production would require a painstaking document-by-document review, although the process may be facilitated to some degree through the use of search terms and other automated methods. This process would be only partially reliable and would likely be both over-inclusive and under-inclusive in some respects. We expect that we would ultimately identify several hundred thousand documents as Protected Material under this approach. This approach would impose very significant additional costs to Applicants and could well delay the ultimate production of documents for several additional weeks.

⁵ *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Joint Protective Order, 29 FCC Rcd. 3688 (2014) (“*Joint Protective Order*”).

⁶ We note that Applicants are also submitting their own competitively sensitive internal documents as part of their document productions and are relying on the *Joint Protective Order* to ensure confidentiality.

⁷ The *Joint Protective Order* defines “Competitive Decision-Making” as “a person’s activities, association, or relationship with any of his clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party.” *Id.* ¶ 2.

Next, we discussed the second option (“Other Protections”) involving a “third level” protective protocol for production of Protected Materials to the Commission. Under this approach, the Commission would give notice to a third party if it planned to reference that party’s Protected Materials in its decision. The Commission would also give the third party an opportunity to redact its Protected Materials prior to having these materials put in the public record. We explained that these procedures did not appear particularly burdensome (aside from the challenges discussed above relating to identifying and isolating Protected Materials from the document productions).

We also discussed the third option (“Additional Options”), which would require that the parties prepare redacted and/or anonymized versions of Protected Materials. Under this approach, anyone seeking access to unredacted versions would be required to subscribe to a more stringent “third-level” protective provision. We explained that it would be unworkable to prepare redacted or anonymized versions of the Protected Materials. Redacting or anonymizing documents is a very time-consuming and manual process that would involve difficult decisions on a case-by-case basis regarding what portions of any particular document to redact/anonymize. As explained above, there are likely hundreds of thousands of documents that meet the definition of “Protected Material.” Given the enormous volume of documents, we believe it would be extremely challenging and burdensome to complete such an approach within a reasonable period of time. Any such redactions would also likely be incomplete and insufficient to obscure completely the terms of the contracts or the identities of contractual counter-parties. We also note that the proposed supplemental certification may well be overly broad and disqualify many counsel involved in this matter.

After reviewing the alternatives discussed in the Commission Staff Memorandum, we discussed some additional approaches that the Commission might consider. For example, instead of providing hard drives with copies of the Protected Materials to third parties, Applicants could enable remote access via the Internet of Protected Materials, but restrict third parties’ ability to print or make copies of such documents. Applicants could also make Protected Material available for review only at the offices of their counsel subject to those same conditions.

We concluded by emphasizing once again the Applicants’ willingness to fully cooperate in an expeditious manner to make any necessary adjustments to their pending document productions to accommodate the Commission’s decision in response to its *Document Production Public Notice*. We continue to stand ready to either submit our entire document productions as they are, and can do so immediately, or to modify our productions to accommodate any changes the Commission deems necessary, subject to the qualifications noted above.

Please direct any questions regarding this matter to the undersigned.

Ms. Marlene H. Dortch
September 26, 2014
Page 4

Respectfully submitted,

/s/ Kathryn A. Zachem

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