

September 29, 2014

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, NW  
Washington, D.C. 20554

Re: **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, 14-90**

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Dear Ms. Dortch:

The undersigned television broadcasters (the “Broadcasters”) are filing this letter in response to the FCC’s *Public Notice* in the above-referenced proceeding.<sup>1</sup> The Broadcasters appreciate the FCC’s decision to seek public comment on the important issue of protecting certain extremely sensitive business information from disclosure in these proceedings. The protective orders in place in the Comcast/Time Warner Cable and AT&T/DirecTV merger review dockets are of concern to the Broadcasters, and we respectfully urge the FCC to prevent any possibility for the dissemination of retransmission consent agreements as described below.

***Retransmission Consent Agreements Include Extremely Sensitive Competitive Information***

The *Public Notice* seeks comment on whether retransmission consent agreements are sufficiently sensitive to warrant protection beyond that provided by the existing protective orders in the merger proceedings.<sup>2</sup>

Retransmission consent agreements include highly sensitive competitive information of both broadcast stations and multichannel video programming distributors (“MVPDs”). Such information has traditionally been closely guarded by these parties as confidential and proprietary information. The Commission similarly has accorded special status to these agreements in prior mergers, reviewing them at the DOJ rather than requiring that they be placed

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<sup>1</sup> 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, *Public Notice*, MB Docket Nos. 14-57, 14-90, DA 14-1383 (rel. Sept. 23, 2014) (the “*Public Notice*”). This letter is timely filed. 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 – Extension of Comment Date, *Public Notice*, MB Docket Nos. 14-57, 14-90, DA 14-1406 (rel. Sept. 26, 2014).

<sup>2</sup> *Public Notice* at 1.

in the public record where they would be available to the large number of third parties that sign the Acknowledgment related to the applicable protective order.

***The Current Protective Orders Will Not Adequately Protect Broadcasters' Confidentiality***

The Broadcasters recognize the balance the FCC must strike between ensuring that information relevant to merger reviews is available to participating parties and protecting private companies' sensitive business information. The current protective orders, however, fail to strike that balance when it comes to adequately protecting retransmission consent information, particularly given the sheer number of people who would gain access to such highly sensitive business information.

Furthermore, Broadcasters at this time have not heard a compelling reason for the need to disseminate these highly sensitive documents beyond the FCC. Any procedures put into place on confidentiality should take into account whether there is a legitimate need to see this information for the purpose of the applicable proceeding.

***The FCC Should Review Retransmission Consent Agreements at the Department of Justice***

The Broadcasters strongly agree with previous broadcast industry filers that have advocated removing any obligation that the applicants file retransmission consent agreements with the FCC in this proceeding.<sup>3</sup> Instead, the FCC should review these documents at the Department of Justice, which routinely requests these documents as part of its merger review. The FCC has followed this approach in past merger proceedings, and it has allowed the FCC to conduct a thorough merger review without endangering the confidentiality of those agreements.

In addition, that approach respects the confidentiality of the competitively sensitive information of entities that are not parties to these proceedings to the greatest extent possible without compromising the FCC's ability to review the agreements to the extent it deems it necessary.

***If the FCC Determines that It Must Place Certain Retransmission Consent Agreements in the Record, Then It Should Issue a Third Protective Order***

The *Public Notice* seeks comment on whether it is possible to simply modify the current protective orders covering highly confidential information.<sup>4</sup> In view of the fact that the Broadcasters believe that the FCC should review these documents at the Department of Justice, it is not necessary to modify the protective orders since these documents would not be submitted to the FCC.

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<sup>3</sup> See Letter from Joshua Pila, *et al.* to William T. Lake, MB Docket No. 14-57, filed Sept. 11, 2014; Letter from Rebecca S. Bryan to William T. Lake, MB Docket Nos. 14-57, 14-90, filed Sept. 17, 2014; Letter from Jason E. Rademacher to William T. Lake, MB Docket Nos. 14-57, 14-90, filed Sept. 23, 2014.

<sup>4</sup> See *Public Notice* at 2.

To the extent, however, the Commission finds any retransmission agreements sufficiently relevant to its review of the merger that it deems it necessary to place those agreements in the record, it should do so under a third protective order. The threshold question before placing any information in the record should be the necessity of that information to permitting effective comment upon the proposed transaction(s). In addition, should the Commission deem it necessary to place such information in the record, it should do so only to the extent necessary for the intended purpose, and permit the non-applicant parties whose contractual confidentiality rights are being impinged by this proceeding the opportunity to redact any portions of the agreements unrelated to the purpose of the Commission's review before permitting parties to the proceeding access to those documents. The Commission should also put procedural restrictions in place, as it has in other proceedings, to minimize unnecessary disclosure of confidential business information.

For example, the Commission should implement a right to objections (in this case, from both programmers and the applicants), copying and images should be prohibited, review should occur only at the offices of outside counsel of the applicant or broadcaster (with the broadcaster having the opportunity to attend in this case), the identities of reviewers should be limited as necessary to fulfill the goals of the proceeding(s), and the Commission should include a limit on the use of the information to the applicable proceeding.

Respectfully submitted,

/s/

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