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October 3, 2014

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

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

Applications of AT&T, Inc. and DIRECTV for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 14-90

Dear Ms. Dortch:

CBS Corporation, Discovery Communications, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., and (collectively, the “Content Companies”) hereby submit these further comments in response to the Media Bureau’s Public Notice, DA 14-1383, released on September 23, 2014 (the “Public Notice”), in the referenced proceedings (the “Proceedings”).

The Content Companies repeatedly have advised the Commission of their grave concern that the availability on the record of their proprietary agreements with the transaction parties will risk public disclosure and dissemination of price and other highly sensitive terms and conditions of those agreements. We also have explained that pricing data are subject to tight internal controls by programmers and distributors alike; and that sharing of these data would be impermissible if it were the result of a private agreement among competitors.

Certain comments filed in response to the Public Notice underscore the Content Companies’ concerns. Thus, for example, Dish Network, ACA and CenturyLink contend that unredacted, proprietary pricing data should be made available to certain participants in the Proceedings, ostensibly so that they can test certain assertions by the transaction parties. *See* Comments of Dish Network Corporation (filed Sept. 26, 2014) at 2-3 (noting high interest in pricing data among NTCA and ITTA, among others); Comments of American Cable Association

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(filed Sept. 26, 2014) at 9-10; Letter from Tiffany West Smink to Marlene H. Dortch (filed Sept. 29, 2014) at 2. Even assuming for purposes of argument that pricing data are necessary for this analysis, none of Dish, ACA or CenturyLink demonstrates why any participant, or any of its outside experts or consultants, requires wholesale access to unredacted commercial agreements -- rather than, say, anonymized rate cards or a spreadsheet or schedule setting out the universe of rates paid under the transaction parties' affiliation and distribution agreements. (We note that Dish, ACA and CenturyLink were the only commenters supporting the inclusion of raw, unredacted materials in the public record. The vast majority of comments submitted in response to the Public Notice favored either segregated review of highly sensitive commercial agreements at the Department of Justice or anonymization and/or redaction of price and other highly confidential terms and conditions of any such materials placed in the record of the Proceedings.)

For their part, the transaction parties complain that segregation and/or redaction of documents in their possession in order to protect highly sensitive third-party information is unnecessary and inappropriate because it would be, variously, "painstaking," "burdensome" or "unworkable" for them. *See* Letter from Kathryn A. Zachem to Marlene H. Dortch, dated September 26, 2014, at 2, 3. This objection is, of course, a *non-sequitur*. Indeed, the fact that the transaction parties have been able to designate certain materials as "highly confidential" -- as they acknowledge they have done -- demonstrates that they are capable of undertaking precisely the sort of segregation of highly sensitive materials, including negotiation materials, at issue here. But evidently, in the view of the transaction parties, the Content Companies and other third parties should bear the risk of competitive harm from public disclosure of their confidential information.

To be clear: the transaction parties voluntarily entered into business transactions that they knew required Commission review and approval and likely would subject them to information and data requests. The Commission, meanwhile, has issued sweeping data requests to the transaction parties that, even under the Protective Orders, would place in the public record every one of the transaction parties' affiliation and distribution agreements and related drafts, correspondence and other negotiation materials, even if those materials have no relevance to the Commission's review or disposition of the proposed transactions. Just as clearly, given that the transaction parties report a universe of tens of millions of pages of materials, it strains credulity that the Commission could conclude preemptively that all of these materials are relevant. The Content Companies, meanwhile, are not parties to the transactions. They are not subject to data requests and have no ability to redact or otherwise manage any of their proprietary information disclosed in response to those requests. They certainly should not be required to assume any of the costs, or worse, to bear all of the risks, of the Commission's merger review process. The incremental cost to the transaction parties -- in money, personnel or time -- of segregating or redacting highly sensitive third-party materials in their possession pales in comparison to the potential business risks to which the Content Companies would be exposed if they are not required to do so. The risk is not academic: the more than 1,700 members of NTCA, ACA and ITTA include virtually all of the small and medium-sized distributors of the Content Companies' networks.

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The Content Companies have proposed that the Commission adopt procedures to provisionally receive and review highly sensitive materials in order to determine their relevance and make a reasoned determination whether they should be included in the public record, as it has done in previous transactions, subject to certain protections including redaction and anonymization. In view of the Commission's decision today to stop the informal 180-day transaction clock until October 29, 2014, *see* Letter from William T. Lake to Kathryn A. Zachem, Steven Teplitz and Catherine Bohigian, dated October 3, 2014, the transaction parties would not be prejudiced by taking steps to identify and segregate highly sensitive materials, as supported by most commenters in this matter. It would be unfortunate if these Proceedings, which among other things are intended to preserve and promote the public interest in competition in the video marketplace, were to have the consequence of facilitating access by competitors to the highly sensitive commercial information of both the Content Companies and the transaction parties.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/

Mace Rosenstein

cc: Vanessa Lemmé
Ty Bream
William Dever
Jim Bird