

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Applications of ) MB Docket No. 14-57  
 )  
Comcast Corp. and )  
Time Warner Cable Inc. )  
 )  
For Consent To Assign or Transfer Control of )  
Licenses and Authorizations )

To: Chief, Media Bureau

**OBJECTION**

Tribune Media Company, Raycom Media, Inc., Gray Television, Inc., Gannett Co, Inc., and Graham Media Group (together, the “Broadcast Objectors”) hereby object to the disclosure of Confidential or Highly Confidential Information submitted in the above-captioned proceeding to Ms. Barbara Esbin of the law firm Cinnamon Mueller. It is the Broadcast Objectors’ understanding that Ms. Esbin may be involved in “Competitive Decision-Making” as that term is defined in the Modified Joint Protective Order and may therefore not be eligible to access Confidential or Highly Confidential Information. The Broadcast Objectors further object to the disclosure of Highly Confidential Information to Mr. Ross Lieberman of the American Cable Association (“ACA”). Mr. Lieberman is neither “Outside Counsel of Record” nor an “Outside Consultant” as those terms are defined in the Modified Joint Protective Order, and therefore is not eligible to access Highly Confidential Information.

**I. Background**

The Modified Joint Protective Order provides that “each Third Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or Highly Confidential Information to any potential Reviewing Party . . . . within three business days after

the Acknowledgement or notice thereof is posted on the Commission’s web page.”<sup>1</sup> A “Third Party Interest Holder” is defined as “a person who is not a Submitting Party who has a confidentiality interest in a Stamped Confidential Document or Stamped Highly Confidential Document or Confidential Information or Highly Confidential Information contained in such a document that is submitted under [the Modified Joint Protective Order].”<sup>2</sup>

As part of its review of the Comcast-Time Warner Cable transaction, the Commission issued information requests to the transacting parties requesting, among other things, copies of retransmission consent and other carriage agreements.<sup>3</sup> Recently, the Commission issued the Modified Joint Protective Order to protect the confidentiality of the information contained in these agreements. Individuals are not eligible to recertify under the Modified Joint Protective Order if they are involved in “Competitive Decision-Making” with respect to such agreements.<sup>4</sup> The Broadcast Objectors each have retransmission consent agreements with one or more of the

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<sup>1</sup> *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, Modified Joint Protective Order, MB Docket No. 14-57, DA 14-1464 ¶ 8 (rel. Oct. 7, 2014) (“*Comcast Joint Protective Order*”).

<sup>2</sup> *Id.* ¶ 2.

<sup>3</sup> See Request for Information Sent to Comcast Corp., MB Docket No. 14-57 (Aug. 21, 2014); Request for Information Sent to Time Warner Cable Inc., MB Docket No. 14-57 (Aug. 21, 2014); Request for Information Sent to Charter Communications, Inc., MB Docket No. 14-57 (Aug. 21, 2014).

<sup>4</sup> See *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, MB Docket Nos. 14-57, 14-90, DA 14-463 ¶ 8 (rel. Oct. 7, 2014) (“*Modification Order*”) (“In the context of the types of contracts the programmers and broadcasters have identified, the high commercial sensitivity of the contracts leads us to conclude that any individual who participates in the negotiation of such contracts likely has been involved in “Competitive Decision-Making,” and allowing such an individual to review the documents would raise the very problem the restriction is designed to address.”).

transacting parties and have concerns about the disclosure of such agreements to the individuals named herein for the reasons set forth below.

## **II. Barbara Esbin May Not Be Eligible to Access Confidential or Highly Confidential Information**

The Modified Joint Protective Order prohibits access to Confidential and Highly Confidential Information by parties involved in “Competitive Decision-Making,” which is defined as follows:

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 or with a Third Party Interest Holder.<sup>5</sup>

After the release of the Modified Protective Order, Ms. Barbara Esbin of Cinnamon Mueller filed an Acknowledgment of Confidentiality seeking access to Confidential and Highly Confidential Information submitted in connection with the Comcast-Time Warner Cable transaction on behalf of ACA.<sup>6</sup> While it may be the case that ACA itself does not engage in Competitive Decision-Making, the Broadcast Objectors are concerned that Ms. Esbin may engage in retransmission consent negotiations on behalf of other Cinnamon Mueller clients (generally, small- and mid-sized cable and telco operators), in competition with or in business relationships with Third Party Interest Holders in these proceedings, including the Broadcast Objectors.

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<sup>5</sup> *Comcast Joint Protective Order* ¶ 2.

<sup>6</sup> *See Notice of Signatories to Acknowledgments of Modified Joint Protective Order*, FCC, <http://transition.fcc.gov/transaction/List-of-Ack-ComcastTWC.xlsx> (last visited Oct. 14, 2014).

Ms. Esbin is the Managing Partner of the Washington, D.C. office of Cinnamon Mueller, a firm that represents clients in retransmission consent negotiations adverse to broadcast television stations. In addition, Ms. Esbin herself has previously advised on retransmission consent matters.<sup>7</sup> The Broadcast Objectors are therefore concerned that Ms. Esbin may not be eligible to access the Confidential and Highly Confidential Information in the retransmission consent agreements that will be made available under the Modified Joint Protective Order.

Any attorney that participates in “Competitive Decision-Making” is not eligible to access Confidential or Highly Confidential Information under the Modified Joint Protective Orders.<sup>8</sup> Following the Commission’s decision to make retransmission consent agreements available for review by counsel for interested parties (subject to the terms of the Modified Joint Protective Order), retransmission consent negotiations are covered by the term “Competitive Decision-Making.” Accordingly, the Broadcast Objectors urge the Commission to investigate the eligibility of Ms. Esbin to access this information, and, until there is a final resolution of this issue, confirm that Ms. Esbin may not review this sensitive information.

### **III. Ross Lieberman Is Not Eligible to Access Highly Confidential Information**

The Modified Joint Protective Order limits access to Highly Confidential Information to “Outside Counsel of Record, Outside Consultants,” and employees of those parties performing “clerical or ministerial functions.”<sup>9</sup> The Order defines “Outside Counsel of Record” as “the

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<sup>7</sup> See, e.g., *ACA Retransmission Consent Webinar*, American Cable Association (Oct. 11, 2011), [http://www.americancable.org/files/images/\\_Consent\\_Webinar-Part\\_One-Rules\\_111011\\_FINAL.pdf](http://www.americancable.org/files/images/_Consent_Webinar-Part_One-Rules_111011_FINAL.pdf).

<sup>8</sup> See *Modification Order* ¶ 8 (“Both the Joint Protective Orders and the Modified Joint Protective Orders prohibit access to Confidential and Highly Confidential Information by any person involved in “Competitive Decision-Making.”).

<sup>9</sup> *Comcast Joint Protective Order* ¶ 7.

attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making.”<sup>10</sup> Similarly, “Outside Consultant” is defined as “a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.”<sup>11</sup>

Ross Lieberman, ACA’s Senior Vice President of Government Affairs, has filed an Acknowledgment of Confidentiality under the Modified Joint Protective Order seeking access to both Confidential and Highly Confidential Information in connection with the Comcast-Time Warner Cable transactions.<sup>12</sup> However, as ACA’s Senior Vice President of Government Affairs, Mr. Lieberman is neither ACA’s Outside Counsel of Record nor an Outside Consultant as those terms are defined in the Modified Joint Protective Order. He therefore is not eligible to access Highly Confidential Information, and in no event should the Broadcast Objectors’ Highly Confidential Information be disclosed to Mr. Lieberman.

\* \* \*

For the foregoing reasons, the Broadcast Objectors object to the Acknowledgments filed by Ms. Esbin and Mr. Lieberman. In accordance with the instructions in the Modified Joint Protective Order, copies of this Objection have been filed with the Commission and served on Ms. Esbin and Counsel for Mr. Lieberman.

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<sup>10</sup> *Id.* ¶ 2.

<sup>11</sup> *Id.*

<sup>12</sup> *See Notice of Signatories to Acknowledgments of Modified Joint Protective Order*, FCC, <http://transition.fcc.gov/transaction/List-of-Ack-ComcastTWC.xlsx> (last visited Oct. 14, 2014).

Respectfully submitted,

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Paul McTear  
Raycom Media, Inc.

Emily Barr  
Graham Media Group

Kevin P. Latek  
Gray Television, Inc.

October 14, 2014

CERTIFICATE OF SERVICE

I, Eve R. Pogoriler, hereby certify that on this 14th day of October, 2014, I caused true and correct copies of the foregoing letter and Certifications of Destruction to be served by Federal Express and/or electronic mail to the following:

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