

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**OBJECTION TO REQUEST FOR ACCESS TO HIGHLY CONFIDENTIAL
INFORMATION AND VIDEO PROGRAMMING CONFIDENTIAL INFORMATION**

Pursuant to the Modified Joint Protective Order in the captioned proceeding,¹ CBS Corporation, Discovery Communications LLC, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., (collectively, the “Content Companies”) hereby object to the request for access to Highly Confidential Information (“HCI”) and Video Programming Confidential Information (“VPCI”) submitted by or on behalf of each individual listed on **Exhibit A** hereto (“Submitting Individuals”).

The Submitting Individuals have each filed an Acknowledgement of Confidentiality seeking access to HCI and VPCI submitted to the Commission in this proceeding.² Two of the

¹ *In the Matter of Application of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorization*, Modified Joint Protective Order, MB Docket No. 14-90, DA 14-1465 (Oct. 7, 2014). All capitalized terms not otherwise defined herein are defined in the Modified Joint Protective Order.

² A copy of the Acknowledgments (and the cover letter that accompanied the Acknowledgments) available on the FCC’s transaction website attached hereto as **Exhibit B**. Although the website identifies the Remaining Submitting Individuals as having filed Acknowledgments, these acknowledgments are not yet posted to <http://www.fcc.gov/transaction/att-directv-aac> or ECFS.

Submitting Individuals—Michael Kellogg and Barbara Wootton (collectively, the “AT&T Submitting Individuals”)—are Outside Counsel for AT&T, one of the parties to the proposed transaction. The remaining three Submitting Individuals (the “Remaining Submitting Individuals”) are not affiliated with any of the parties to the proposed transaction. These Acknowledgements were posted to the Commission website on October 10, 2014. No other Acknowledgments seeking access to HCI or VPCI were posted to the Commission Website on October 10, 2014.³

In the case of the AT&T Submitting Individuals, the Content Companies object to the disclosure of HCI or VPCI produced by any party other than AT&T to the AT&T Submitting Individuals (and any of the AT&T Submitting Individuals’ respective employees, as those terms are defined in Paragraph 13 of the Modified Joint Protective Order).⁴ In the case of the Remaining Submitting Individuals, the Content Companies object to the disclosure of HCI or VPCI produced by any party to the Remaining Submitting Individuals (and any of the Remaining Submitting Individuals’ respective employees, as those terms are defined in Paragraph 13 of the Modified Joint Protective Order).

³ Under the Modified Joint Protective Order, no individual may access the Content Companies’ HCI or VPCI until the Content Companies “have an opportunity to object to the disclosure” of such information. Modified Joint Protective Order ¶ 8. Under the Order, the Content Companies have no notice of—and therefore no opportunity to object to—an Acknowledgment until notice of the Acknowledgment has been “posted to the Commission’s web page for this proceeding” at <http://www.fcc.gov/transaction/att-directv>. *Id.* ¶ 7 & n.7.

⁴ Under the Modified Joint Protective Order, the Content Companies are entitled to object to the Submitting Parties’ requests for access because they are Third Party Interest Holders and have confidentiality interests in certain of the documents to which access is sought.

I. None of the Submitting Individuals Should Be Permitted To Access HCI or VPCI.

The Content Companies' objection rests on their longstanding objection to permitting *any* individual to access their highly confidential carriage agreements with the transaction parties and related negotiation materials. Instead, the Bureau should follow the same approach the Commission has successfully implemented in other proceedings pursuant to which Commission personnel review VPCI in the custody of the Department of Justice. Alternatively, the Bureau should place only the relevant portions of VPCI in the public record and redact and/or anonymize certain of the information contained in those materials. This is especially appropriate here, where none of the Submitting Individuals has made a particularized, good-faith showing as to why each needs access to the Content Companies' VPCI. The substance of this objection is set forth more fully in the Application for Review filed by the Content Companies in the captioned proceeding on October 14, 2014.

This objection is applicable even though the AT&T Submitting Individuals are Outside Counsel for AT&T, one of the parties to the proposed transaction. The Content Companies' HCI and the VPCI are subject to strict restrictions on access. The AT&T Submitting Individuals have made no showing that they would be entitled to access the Content Companies' HCI and VPCI in the absence of the Commission's grant of access to such information in this proceeding. Indeed, under the confidentiality provisions of many carriage agreements, most (if not all) of the employees of a third-party purchaser of one of the parties to a carriage agreement are prohibited from knowing the terms of that agreement until after the purchase closes—and even then, access to the agreement's terms may continue to be tightly restricted.

It makes no difference whether AT&T or any of the AT&T Submitting Individuals would be entitled to access to HCI and VPCI if the proposed transaction closes; there is no guarantee

that it will, and the Content Companies do not believe any of the AT&T Submitting Individuals currently has the right to access the Content Companies' HCI and VPCI.

Moreover, even if AT&T or some AT&T Submitting Individuals would otherwise have a right to access this information, it cannot be the case that a total of 47 Outside Counsel (from six different law firms) and 17 Outside Consultants⁵—plus their employees—need access to the Content Companies' most sensitive information, including VPCI, to provide legal or consulting services to AT&T in connection with the Commission's review of these proposed transactions. The volume of individuals seeking access to the Content Companies' HCI and VPCI increases the likelihood of even inadvertent misuse of that information and makes it more difficult to detect the source of any improper use of that information. And the fact that some subset of one of the transaction parties' lawyers may have had access to certain agreements of the other parties does not justify access for *all* lawyers for both parties to *all* agreements. Otherwise, if the transactions do not close, there is an unacceptably high risk that one transaction party may later use for its benefit the terms of the other transaction party's deals.

II. The Content Companies Specifically Object to Disclosure of HCI and VPCI to the Remaining Submitting Individuals.

Even if some individuals are permitted to access HCI or VPCI, there are additional reasons why the Remaining Submitting Individuals should not be permitted to access HCI or VPCI.

⁵ These totals include the 45 Outside Counsel and 17 Outside Consultants who were the subject of the Content Companies' October 15, 2014 objection filed in this proceeding. *See* Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, MB Docket No. 14-90 (Oct. 15, 2014).

A. Carmelia Miller and Paul Goodman

Carmelia Miller and Paul Goodman have submitted Acknowledgments of Confidentiality on behalf of the Greenlining Institute. Ms. Miller and Mr. Goodman, who serve as in-house counsel at the Greenlining Institute, do not qualify as Outside Counsel or as Outside Consultants and therefore should be prohibited under the terms of the Modified Joint Protective Order from viewing HCI or VPCI. Accordingly, Ms. Miller and Mr. Goodman should not be granted access to HCI or VPCI.

B. Stephanie Chen

Stephanie Chen has submitted an Acknowledgment of Confidentiality on behalf of the Greenlining Institute. Ms. Chen, who serves as Energy and Telecommunications Policy Director at the Greenlining Institute, does not qualify as Outside Counsel or as an Outside Consultant and therefore should be prohibited under the terms of the Modified Joint Protective Order from viewing HCI or VPCI. Accordingly, Ms. Chen should not be granted access to HCI or VPCI.

* * *

For the reasons stated herein, the Content Companies object to providing HCI and VPCI (1) to each of the Remaining Submitting Individuals, and (2) to each of the AT&T Submitting Individuals, to the extent that such individuals seek access to confidential information produced by parties other than AT&T. A copy of this Objection is being provided to the Submitting Individuals' counsel, placing his or her employees on notice that they may not access such HCI or VPCI until this Objection (including the Application for Review referenced in this Objection) is finally resolved by the Commission and any court of competent jurisdiction.

Respectfully submitted,

**CBS CORPORATION, DISCOVERY
COMMUNICATIONS LLC, SCRIPPS
NETWORKS INTERACTIVE, INC., THE
WALT DISNEY COMPANY, TIME WARNER
INC., TWENTY FIRST CENTURY FOX, INC.,
UNIVISION COMMUNICATIONS INC., AND
VIACOM INC.**

By: /s/ Mace Rosenstein

Mace Rosenstein
Laura Flahive Wu
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., N.W.
Washington, DC 20004-2401
(202) 662-6000

Their counsel

October 16, 2014

EXHIBIT A
Submitting Individuals

1. Carmelita L. Miller, In house counsel for The Greenlining Institute
2. Stephanie Chen, In house for The Greenlining Institute
3. Paul Goodman, In house counsel for The Greenlining Institute
4. Michael Kellogg, Outside Counsel for AT&T
5. Barbara Wootton, Outside Counsel for AT&T

EXHIBIT B

Peter J. Schildkraut
Peter.Schildkraut@aporter.com
+1 202.942.5634
+1 202.942.5999 Fax
555 Twelfth Street, NW
Washington, DC 20004-1206

October 9, 2014

VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-90 — Acknowledgments of Confidentiality

Dear Ms. Dortch:

On behalf of AT&T Inc. ("AT&T") and in accordance with the *Modified Joint Protective Order* in the above-referenced proceeding,¹ I am submitting herewith the attached Acknowledgments of Confidentiality to obtain access to Stamped Confidential Documents, Confidential Information, Stamped Highly Confidential Documents, and Highly Confidential Information filed in this proceeding. These Acknowledgments of Confidentiality have been signed by Outside Counsel to AT&T and In-House Counsel to AT&T.

Please contact me at (202) 942-5634 or Peter.Schildkraut@aporter.com if you have any questions. Thank you for your assistance.

Respectfully submitted,



Counsel for AT&T Inc.

Attachment

cc: Attached Service List

¹*Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Modified Joint Protective Order, DA 14-1465 (MB rel. October 7, 2014).

ATTACHMENT B

Acknowledgment of Confidentiality

MB Docket No. 14-90

I am seeking access to only Confidential Information or Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Modified Joint Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Modified Joint Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information except as allowed by the Modified Joint Protective Order.

I acknowledge that a violation of the Modified Joint Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Modified Joint Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Modified Joint Protective Order limits any other rights and remedies available to a Submitting Party or a Third Party Interest Holder at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Modified Joint Protective Order.

I certify that I am not involved in Competitive Decision-Making.

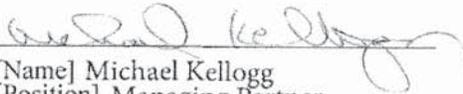
Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Modified Joint Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as a person described in paragraph 13 of the Modified Joint Protective Order and agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Modified Joint Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession or in the possession of those who work for me, except as provided in the Modified Joint Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Modified Joint Protective Order.

Executed this 8th day of October, 2014



[Name] Michael Kellogg
[Position] Managing Partner
[Firm] Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
[Telephone] 202-326-7902

ATTACHMENT B

Acknowledgment of Confidentiality

MB Docket No. 14-90

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I hereby acknowledge that I have received and read a copy of the foregoing Modified Joint Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Modified Joint Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information except as allowed by the Modified Joint Protective Order.

I acknowledge that a violation of the Modified Joint Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Modified Joint Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Modified Joint Protective Order limits any other rights and remedies available to a Submitting Party or a Third Party Interest Holder at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Modified Joint Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Modified Joint Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as a person described in paragraph 13 of the Modified Joint Protective Order and agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Modified Joint Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession or in the possession of those who work for me, except as provided in the Modified Joint Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Modified Joint Protective Order.

Executed this 9th day of October, 2014.



Barbara Wootton
Counsel
Arnold & Porter LLP
202-942-6545

CERTIFICATE OF SERVICE

I, Mace Rosenstein, hereby certify that on this 16th day of October, 2014, I caused true and correct copies of the foregoing Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information to be served by Federal Express or electronic mail to the following:

Peter J. Schildkraut
Maureen R. Jeffreys
ARNOLD & PORTER LLP
555 Twelfth Street, NW,
Washington, DC 20004-1206
peter.schildkraut@aporter.com
maureen.jeffreys@aporter.com
Counsel for AT&T

William M. Wiltshire
Harris, Wiltshire & Grannis LLP
1919 M Street NW
Washington, DC 20036
wwiltshire@hwglaw.com
Counsel for DIRECTV

Paul Goodman
The Greenlining Institute
1918 University Ave., 2nd FL
Berkeley, CA 94704
paulg@greenlining.or
Counsel for the Greenlining Institute

By: /s/ Mace Rosenstein
Mace Rosenstein