

# COVINGTON & BURLING LLP

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October 15, 2014

## By ECFS and Hand Delivery

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

Re: *In the Matter of Application of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorization*, MB Docket No. 14-57

Dear Ms. Dortch:

On behalf of CBS Corporation, Discovery Communications LLC, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., (collectively, the "Content Companies"), I enclose a copy of objections to requests for access to Highly Confidential Information ("HCI") and Video Programming Confidential Information ("VPCI"), which were filed on October 8, 2014 and posted to the Commission website on October 9, 2014.

On October 14, 2014, we attempted to file the objections via the ECFS system. We received repeated error messages, at times were unable to access the ECFS system at all, and were ultimately unable to file electronically. (The Content Parties separately filed an Application for Review and Request for Stay on October 14, 2014. They were successful in filing these documents after several hours of receiving repeated error messages from the ECFS system.) Unable to execute electronic filing on October 14, 2014, the Content Parties served the transaction parties and counsel for the Submitting Parties identified in the enclosed objection. For reference, I enclose a copy of the service email, dated October 14, 2014.

The Content Companies respectfully request that, in view of the circumstances described above, the Commission consider the enclosed objection as timely filed and prohibit access to HCI or VPCI by the Submitting Parties identified therein. *See In the Matter of Application of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorization*, Modified Joint Protective Order, MB Docket No. 14-57,

October 15, 2014

Page 2

DA 14-1464 (Oct. 7, 2014) (“If an objection is filed after the deadlines specified in this paragraph, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information or Highly Confidential Information by the Reviewing.”).

Please contact the undersigned if you have any questions about this submission.

Respectfully submitted,

A handwritten signature in blue ink that reads "Laura Flahive Wu". The signature is written in a cursive style.

Laura Flahive Wu

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

In the Matter of )  
 )  
Applications of )  
 )  
Comcast Corporation and Time Warner Cable Inc., ) MB Docket No. 14-57  
Charter Communications Inc. and SpinCo, )  
 )  
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,<sup>1</sup> CBS Corporation, Discovery Communications LLC, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, 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”).

On October 8, 2014, the Submitting Individuals each filed an Acknowledgement of Confidentiality seeking access to HCI and VPCI submitted to the Commission in this proceeding.<sup>2</sup> The Content Companies object to the disclosure of such confidential information to

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<sup>1</sup> *In the Matter of Application of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorization*, Modified Joint Protective Order, MB Docket No. 14-57, DA 14-1464 (Oct. 7, 2014). All capitalized terms not otherwise defined herein are defined in the Modified Joint Protective Order.

<sup>2</sup> A copy of the Acknowledgments (and the cover letter that accompanied the Acknowledgments) is attached hereto as **Exhibit B**.

the Submitting Individuals (and any of the Submitting Individuals' respective employees, as those terms are defined in Paragraph 13 of the Modified Joint Protective Order) on at least two grounds.<sup>3</sup>

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

The Content Companies reiterate their 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.

**II. The Content Companies Specifically Object to Disclosure of VPCI to Certain Submitting Individuals**

Even if some individuals are permitted to access HCI or VPCI, there are additional reasons why Ross Lieberman and Barbara Esbin should not be permitted to access such material.

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<sup>3</sup> 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.

**A. Ross Lieberman**

Ross Lieberman, who serves as Vice President of Government Affairs with the American Cable Association, does not qualify as Outside Counsel or as an Outside Consultant and therefore is expressly prohibited under the terms of the Modified Joint Protective Order from viewing HCI or VPCI. Accordingly, Mr. Lieberman should not be granted access to HCI or VPCI.

**B. Barbara Esbin**

Barbara Esbin has been or is currently involved in Competitive Decision-Making and is therefore expressly prohibited under the terms of the Modified Joint Protective Order from viewing HCI or VPCI.

Ms. Esbin is a member of the law firm Cinnamon Mueller. Like certain of her colleagues at Cinnamon Mueller, Ms. Esbin provides advice about and participates in the business decisions of the firm's distributor clients involved in affiliation transactions with the Content Companies. She also regularly advises clients with respect to policy issues implicating distribution and carriage agreements. In order to do so, she must consult with her clients concerning competitive decision-making matters.<sup>4</sup> Thus, disclosure to Ms. Esbin of the Content Companies' sensitive

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<sup>4</sup> See, e.g., Notice of Ex Parte Presentation of American Cable Association, Time Warner Cable, DISH Network, DirecTV; 2010 Quadrennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182; and Amendment of the Commission's Rules Related to Retransmission Consent, MB Docket No. 10-71 (Nov. 21, 2012) ("Esbin acknowledged that although consumers have a choice in video programming, cable operators have no choice in where they get their broadcast programming: 'You have to say yes,' she said. Esbin expects the increasing retransmission fees to continue, with 'no obvious break in sight...unless the arms race of attacking the consumer wallet comes to an end.' She later emphasized that cable consumers cannot opt out to programming they do not want to pay for, like ESPN.").

commercial information—including the license fees and carriage terms to which the Content Companies have agreed—would cause manifest and irreparable competitive harm.

\* \* \*

For the reasons stated herein, the Content Companies object to providing Highly Confidential and Video Programming Confidential Information to each of the Submitting Individuals. A copy of this Objection is being provided to each Submitting Individuals' counsel, placing his or her employees on notice that they may not access Confidential Information, Highly Confidential Information, or Video Programming Confidential Information until this Objection (including the Application for Review referenced in this Objection) is 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., TV ONE, LLC, 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*

**EXHIBIT A**  
**Submitting Individuals**

1. Gary Biglaiser, Outside Consultant to American Cable Association
2. Donna L. Brown, Outside Consultant to American Cable Association
3. Barbara Esbin, Outside Counsel to American Cable Association
4. Brooks Harlow, Outside Counsel to American Cable Association
5. David Lafuria, Outside Counsel to American Cable Association
6. Ross Lieberman, In-house Counsel to American Cable Association
7. Leila Rezanavaz, Outside Consultant to American Cable Association
8. Elisheva Simon, Outside Consultant to American Cable Association

# **EXHIBIT B**

8300 Greensboro Dr.  
Suite 1200  
McLean, VA 22102

(703) 584-8666  
WWW.FCCLAW.COM

**LNGS** | LUKAS,  
NACE,  
GUTIERREZ  
& SACHS, LLP

October 8, 2014

**By ECFS and Hand Delivery**

William T. Lake, Chief  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Acknowledgment of Confidentiality, 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**

Dear Mr. Lake:

On behalf of the American Cable Association (“ACA”), enclosed are executed Acknowledgments of Confidentiality as set forth in the Media Bureau’s Modified Joint Protective Order (DA 14-1464) for access to confidential and highly confidential documents filed in the above-referenced docket. The signatories are ACA’s senior vice-president for regulatory affairs, ACA’s outside economic consultant, outside counsel, outside paralegals and outside consulting engineer, seeking access to confidential and highly confidential information submitted in this proceeding.

Sincerely,



David A. LaFuria  
Counsel for the American Cable Association

Enclosures

## ATTACHMENT B

## Acknowledgment of Confidentiality

MB Docket No. 14-57

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.

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

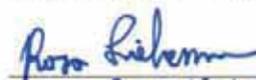
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I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

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

Executed this 7<sup>th</sup> day of October, 2014



[Name] Ross Lieberman  
[Position] SVP of Govt Affairs  
[Firm] American Cable Association  
[Telephone] 202-494-5661

## ATTACHMENT B

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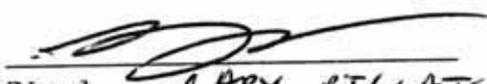
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Executed this 7 day of October 2014

[Name]  
[Position]  
[Firm]  
[Telephone]

  
GARY BIGLAISER  
PROFESSOR/CONSULTANT  
UNC/ACA  
919 6195650

**ATTACHMENT B**  
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**MB Docket No. 14-57**

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Executed this 7 day of October, 2014

Barbara Esbin

[Name] Barbara Esbin  
[Position] Partner  
[Firm] Cinnamon Mueller  
[Telephone] 202 872-6811

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MB Docket No. 14-57

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Executed this 7<sup>TH</sup> day of OCTOBER, 2014.



Name]	DAVID LAFURIA
Position]	PARTNER
Firm]	LUKAS, NACE, GUTIERREZ, SACHS, LLP
Telephone]	703-584-8666

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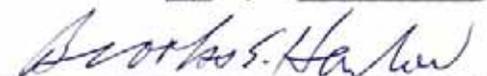
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I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

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Executed this 21 day of OCTOBER, 2014.



[Name] BROOKS E. HARLOW  
[Position] ATTORNEY  
[Firm] LUKAS, NACE, GUTIERREZ + SAKH, LLP  
[Telephone] 703-584-8680

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Executed this 8<sup>th</sup> day of OCTOBER, 2014.

Leila Rezanavaez  
[Name] Leila Rezanavaez  
[Position] Senior Consulting Engineer  
[Firm] Lukas, Mace, Gutierrez & Sachs  
[Telephone] 403-5848668

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Executed this 8<sup>th</sup> day of October 2014.



Donna L. Brown  
Legal Assistant  
Lukas, Nace, Gutierrez & Sachs, LLP  
(703) 584-8678

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Elisheva Simon  
Legal Assistant  
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## CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that on this 8<sup>th</sup> day of October, 2014, I caused true and correct copies of the foregoing to be served via email and U.S. Mail to the following:

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I, Mace Rosenstein, hereby certify that on this 14th day of October, 2014, I caused true and correct copies of the foregoing letter and Acknowledgments of Confidentiality to be served by Federal Express or electronic mail\* to the following:

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/s/ Mace Rosenstein

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