October 20, 2014

VIA ELECTRONIC FILING

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

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

Dear Ms. Dortch:

Comcast Corporation ("Comcast"), Time Warner Cable Inc. ("TWC"), and Charter Communications, Inc. ("Charter") (collectively, "Applicants") hereby respond to (1) the "Application for Review" and (2) the accompanying "Emergency Request for Stay of Media Bureau Order and Associated Modified Protective Orders" ("Stay Request") filed in the above-captioned proceeding by the "Content Companies."[1]

Applicants' three principal comments with respect to these filings are as follows:

- **Applicants Have Already Filed Their Most Sensitive Documents and Information Under the Bureau's Protective Orders, and Have Supported Various Approaches to Help the Bureau Balance the Competing Interests at Stake Here**. Applicants, along with other third parties participating in this proceeding, have already filed with the Commission their most competitively sensitive information under the Initial Joint Protective Order.[2] This fact, combined with the fact that the Modified Joint Protective Order ("MJPO") includes additional protections and restrictions that *exceed* those in the Initial Joint Protective Order, should address concerns about access to and use of Highly

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[1] *See* Application for Review of CBS Corp., et al., *Applications of Comcast Corp. and Time Warner Cable Inc., Charter Commc'ns Inc. and SpinCo for Consent to Assign Licenses or Transfer Control of Licensees*, et al., MB Docket Nos. 14-57, 14-90 (Oct. 14, 2014); Emergency Request for Stay of Media Bureau Order and Associated Modified Protective Orders of CBS Corp., et al., *Applications of Comcast Corp. and Time Warner Cable Inc., Charter Commc'ns Inc. and SpinCo for Consent to Assign Licenses or Transfer Control of Licensees*, et al., MB Docket Nos. 14-57, 14-90 (Oct. 14, 2014). The "Content Companies" include CBS Corporation, Discovery Communications, 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.

[2] *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, Joint Protective Order, 29 FCC Rcd. 3688 (2014) ("Initial Joint Protective Order").

Confidential Information ("HCI") and Video Programming Confidential Information ("VPCI").[3] Applicants have also sought to assist the Bureau's legitimate efforts to protect programming contracts and build a complete record through various possible approaches. For example, we have supported Commission access to these programming contracts at the DOJ, *in camera* review of them by the Commission at the FCC, and/or access to these documents under the Initial Joint Protective Order as well as the MJPO. Applicants continue to be open to these approaches and believe that they can adequately balance the various competing interests at issue in this proceeding.

- **The Commission Should Avoid Any Further Delay to the Transaction Review Process**. Regardless of the ultimate resolution of the Content Companies' Stay Request and/or Application for Review, that should not further delay, or otherwise negatively impact, the Commission's review of the Comcast-TWC transaction and the related Divestiture Transactions with Charter (collectively, the "Transaction"). Rather, as highlighted below, the record in this proceeding is substantial, including an unprecedented amount of Applicants' HCI that signatories of the Initial Joint Protective Order have had access to for months in order to comment and otherwise actively participate over one of the longest comment periods in Commission history for such a transaction. And Commission precedent makes clear that the inability of parties to review the types of programming contract information at issue in this case does not justify an extension of transaction review comment periods. Thus, Applicants respectfully and strongly urge the Commission to continue its review of the record, including the programming contracts Comcast submitted to the Commission on October 14, 2014 (and that TWC and Charter will shortly file under the MJPO), and to conclude its analysis under the current contemplated schedule of early next year.

- **The Commission Should Reject the Content Companies' Attempt to Grant Themselves an Automatic Stay Using Blanket Objections to Parties Re-Certifying Under the MJPO**. The Commission should make clear that the MJPO does not allow for blanket objections and should reject all such objections already filed by the Content Companies that do not object to access by specific individual MJPO signatories and are not based on a good-faith argument under one of the permitted substantive bases for challenging a re-certified party under the MJPO, namely: (1) the person is involved in Competitive Decision-Making or (2) the person does not qualify as a Counsel to a Participant in the Proceeding, Outside Consultant, or other relevant status allowing the individual to review the relevant Confidential Information, HCI, or VPCI.

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[3] *See Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, Modified Joint Protective Order, DA 14-1464, ¶ 13 (MB Oct. 7, 2014) ("MJPO").

I. Applicants Have Already Filed Their Most Sensitive Documents and Information Under the Bureau's Protective Orders, and Have Sought to Assist the Bureau's Various Efforts to Protect Programming Contracts.

Applicants certainly recognize the commercially sensitive nature of video programming agreements and related documents (collectively, "programming contracts"), and thus we understand the Content Companies' concerns about ensuring that these documents are adequately protected as part of the Commission's transaction review process. At the same time, Applicants believe that the Bureau's approach strikes a reasonable balance among the various interests at stake in this proceeding. As the Bureau has explained, the MJPO is intended to give the Commission direct access to potentially relevant information to conduct its public interest analysis as promptly and efficiently as possible and to protect highly confidential business information, while also permitting very limited access to parties' counsel and consultants that make the requisite certifications and comply with stringent restrictions on the use of such information.[4]

Indeed, as further described below, Applicants have already submitted into the record in this proceeding several million pages of documents and extensive responses to Commission information requests, many of which contain HCI, including some of Applicants' most competitively sensitive business information. Other parties (e.g., Netflix, Dish, Cogent) have done so as well. And these highly sensitive materials have been submitted even under the Initial Joint Protective Order. Thus, the fact that the MJPO includes additional protections and restrictions should further address concerns about access to and use of HCI and VPCI.

With respect to Applicants' programming contracts, as Applicants have previously indicated, since September 11, 2014, we have been ready, willing, and able to submit such contracts to the Commission.[5] In fact, Applicants deferred filing their complete document production, including programming contracts, at the request of the Commission, as reflected in the Commission's *Document Production Public Notice*: "The Commission has asked the applicants to defer further production of documents in MB Docket Nos. 14-57 . . . pending our consideration of these issues."[6]

At the same time, we have been cognizant of the Content Companies' concerns and have worked actively with the Bureau to help craft procedures that would address them: Indeed, belying the Content Companies' unjustified claim that Applicants "have expressed more interest in ensuring the prompt closing of their proposed transactions than protecting the Content

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[4] In light of these protections and restrictions, the Content Companies' statements that the "public" will have access to their VPCI are considerably overblown.

[5] *See* Letter from Kathryn A. Zachem, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57, at 1-2 (Sept. 26, 2014) ("September 26 Ex Parte Letter").

[6] *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, DA 14-1383, at 2 (Sept. 23, 2014).

Companies' highly sensitive information,"[7] Applicants proactively suggested and offered to implement *additional, unprecedented protections* – beyond the Initial Joint Protective Order – to further safeguard programming contract materials. For example, "we suggested that the Commission could require parties to the existing order to re-certify that they are not involved in 'Competitive Decision-Making,' focusing in particular on the programming agreements at issue,"[8] and we recommended to Bureau staff that "instead of providing hard drives with copies of the [programming contracts] to third parties, Applicants could enable remote access via the Internet of Protected Materials, but restrict third parties' ability to print or make copies of such documents [and] also make [programming contracts] available for review only at the offices of [Applicants'] counsel subject to those same conditions."[9] In short, we have been supportive of confidentiality protections for the Content Companies that exceed the confidentiality protections that apply to Applicants' most sensitive and proprietary information.

These additional recommended restrictions were incorporated into the MJPO, which requires a secure method to access segregated documents containing VPCI. Only individuals who certify that they are authorized to access VPCI under the MJPO will be provided with credentials to access such documents. The remote database will be set up to prohibit users from downloading, printing, or otherwise making copies of any documents containing VPCI. And in order to achieve the segregation of VPCI from other materials contemplated by the MJPO, Comcast, TWC, and Charter conducted additional reviews of responsive documents in their productions to determine whether documents contained any VPCI. If documents contained information relating to programming contracts, terms, or negotiations of the same, Applicants instructed their document review teams to designate those documents as containing VPCI. In addition, where documents were ambiguous but could be understood to convey limited information about programming negotiations or contract terms, reviewers were directed to lean towards designating such documents as containing VPCI as well.

Lastly, Applicants have supported other possible approaches for protecting programming contracts and other HCI while achieving the Bureau's stated objectives, including the Commission's access to and review of such materials from the DOJ, and submission of the programming contracts to the Commission for *in camera* review, so that it can identify any information relevant to its public interest analysis and redact or anonymize any relevant third-party HCI or VPCI that it wishes to include in the record and reference in its decision on the Transaction.[10] Applicants continue to be open to these approaches and believe that they can adequately balance the various competing interests at issue.[11]

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[7] Stay Request at 8.

[8] September 26 Ex Parte Letter at 2.

[9] *Id.* at 3.

[10] *Id.* at 2. Now that Comcast has filed its programming contracts with the Commission on October 14th, a submission that the Content Companies do not oppose, *see* Stay Request at 5 n.11, the Commission can and should continue its review of these materials in order to avoid any further delays to this proceeding. The Content Companies' objections potentially affect only the extent to which certain third parties obtain access to the programming contracts, and are in no way an impediment to the Commission's ability to review the programming

II. Further Delays of the Transaction Review Process Cannot Be Justified and Should Not Be Permitted.

Regardless of the ultimate resolution of the Content Companies' Stay Request and/or Application for Review, the Commission should ensure that no further delays occur in its transaction review. Thus, once parties' reply comments are filed on the October 29, 2014 deadline and Applicants submit their final responses to the Commission's Information and Data Requests (which Applicants plan to do no later than October 29, 2014), the Commission's 180-day clock for this Transaction should restart, and further delays should be avoided.[12]

Any further delay is especially unjustified given that the record in this proceeding is already very robust, and protective order signatories have had access to an enormous amount of Applicants' highly confidential information for many months, which has afforded them a fair and substantial opportunity to participate fully in this proceeding. Therefore, even if certain parties do not receive access to programming contracts (or their access is deferred), or even if the Commission ultimately determines that it will review programming contracts at the DOJ or *in camera*, there is no colorable argument that the record the Commission has compiled is in any way deficient or that a further delay to this proceeding is justified. Indeed, given that prior transactions involving cable operators generally have not afforded third parties *any* access to programming contracts, any access to such materials under the MJPO would only expand customary opportunities for parties to participate in the merger review process.

Notably, the Applicants have already filed a tremendous amount of information about video programming, broadband, and other key issues, and the inclusion of this information in the record ensures the Commission's fair and transparent review of the Transaction and the

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contracts and other transaction-related documents now in its possession to identify and rely upon information relevant to its public interest analysis, consistent with the 180-day review timeline.

[11] As Applicants have previously indicated, it would be unworkable to prepare redacted or anonymized versions of all the hundreds of thousands of pages of programming contract materials that the Applicants have collected and filed with the DOJ and the Commission due to the enormous volume of these materials and the difficulty of determining what sensitive materials should be redacted. *See* September 26 Ex Parte Letter at 3. Further, the Content Companies' have made clear that they would object to any process that leaves it up to Applicants to determine what HCI should be redacted or anonymized from the relevant documents. *See* Stay Request at 9-10 (claiming a "substantial risk that the Content Companies' highly sensitive confidential information will be improperly designated or erroneously produced").

[12] In 2000, FCC Chairman William Kennard – in response to bipartisan criticism of the Commission's prolonged transaction review proceedings – adopted reforms intended to render "a Commission decision on applications associated with even the most complex mergers within 180 days following public notice." Statement of William Kennard, Chairman, FCC, Before the House Committee on Commerce Subcommittee on Telecommunications, Trade and Consumer Protection on the Telecommunications Merger Review Act of 2000 (Mar. 14, 2000), *available at* http://transition.fcc.gov/Speeches/Kennard/Statements/2000/stwek021.html. Thus, "the timeline represents the [Commission's] goal of completing action on assignment and transfer of control applications within 180 days[.]" Informal Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Authorizations Relating to Complex Mergers, FCC, http://www.fcc.gov/encyclopedia/informal-timeline-consideration-applications-transfers-or-assignments-licenses-or-autho (last visited Oct. 19, 2014).

meaningful and effective participation of interested third parties.[13] For example, Comcast has already submitted into the record:

- detailed video, broadband, and telephone subscriber data;
- detailed information regarding its content acquisition practices;
- explanations and summaries of key aspects of Comcast's video programming agreements, including exclusivity, MFN, and ADM provisions;
- detailed data regarding the location of and technology used to support its physical plant;
- detailed analyses and assessments of current and future competitive entry;
- documents regarding its current and future business and strategic plans and budgets;
- documents regarding its network upgrade plans;
- detailed information and analyses regarding its interconnection relationships and practices, including copies of its interconnection agreements;
- FCC Form 477 broadband connections data;
- detailed information regarding its advertising sales practices;
- detailed information regarding its authentication practices;
- detailed information regarding current and planned capabilities of its CPE; and
- detailed information and analyses regarding NBCUniversal's content distribution relationships and practices, including its agreements with MVPDs.

In addition, Applicants have submitted multiple economic declarations by Dr. Israel, Drs. Rosston and Topper (two of which were filed with the Comcast-TWC Public Interest Statement submitted on April 8); an economic declaration by Dr. Carlton; and engineering declarations by Dr. Dovrolis, and Kevin McElearney, Senior Vice President, Network Engineering for Comcast Cable. In particular, with respect to video programming issues, Drs. Rosston and Topper submitted economic and econometric analyses using the Commission's own methodologies from the Comcast-NBCUniversal Order showing that: (1) the Transaction will not generate market power in program buying or program selling; (2) Comcast has not favored its own programming, and the Transaction will not increase Comcast's incentives to foreclose or harm unaffiliated content providers to favor its own programming; and (3) there is no support for claims that the Transaction will lead Comcast to use its programming to disadvantage its video distribution rivals. Applicants also submitted all data and documents supporting the declarations and reply declarations of Drs. Rosston and Topper and Dr. Israel.[14]

Beyond this substantial record, interested parties have had the ability to review these documents and information and to submit formal pleadings or *ex parte* filings over one of the

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[13] Representatives of 22 parties signed the Initial Joint Protective Order adopted in this proceeding, including ACA, Cogent, COMPTEL, Consumer Federation of America, Discovery Communications, Dish, the NBC Television Affiliates, Netflix, Public Knowledge, RCN, TV One, Writers Guild of America, West, and others.

[14] Further, not only are any concerns about the programming contracts themselves already addressed and answered in the economic declarations of Drs. Rosston and Topper (whose analyses and backup data, as noted, have been in the record and accessible to all protective order signatories for months), but the NBCUniversal conditions already govern all of Comcast's programming contracts in all events, thereby further refuting any such concerns.

longest comment periods that the Commission has ever established for a transaction review process. Consider in particular the following:

- Comcast and TWC filed their Public Interest Statement on April 8, 2014, along with two substantial economic declarations justifying the Transaction.
- On June 4, 2014, Applicants filed further Public Interest Statements and a supplemental economic declaration by Drs. Rosston and Topper, explaining that the Divestiture Transactions with Charter would further enhance the public interest benefits of the Transaction while introducing no competitive or consumer harms.
- Thus, parties have had access to these key materials and HCI (for protective order signatories) for between four and six months.
- On July 10, 2010, the Commission released a Public Notice seeking comment on the Transaction. Because the Commission wanted "the widest possible public participation and has a strong interest in ensuring that the record is complete and fully developed, [it] established a 46-day period for the filing of initial comments and petitions to deny," a period of time that is "longer than the pleading cycles provided in some other media-related transaction proceedings in recent years." The Commission also provided for a 29-day period for responses to comments and oppositions to petitions, and a 15-day period for replies to responses and oppositions. In short, the Commission "established a relatively lengthy three-month pleading cycle, consisting of three rounds of pleadings, initial comments and petitions to deny, responses and oppositions, and replies to responses and oppositions, which, together with the Commission's *ex parte* process and the opportunity for parties to comment on the Applicants' responses to information requests, provides interested parties with substantial time and multiple opportunities to participate in the proceeding."[15]
- On October 3, 2014, the Commission extended the period for filing reply comments for three weeks (from October 8 to October 29), so that all interested parties would have even more time to review the Applicants' oppositions filed on September 23, 2014, including the video-programming specific economic and econometric analyses (and accompanying backup data) submitted by Applicants' economists.[16]

The Content Companies claim that "[n]o interested party will be harmed by a stay while the Application for Review is under consideration" and that the Commission's consideration of the Application for Review will not "delay the Commission's overall review of the underlying

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[15] *Applications of Comcast Corp., Time Warner Cable Inc., Charter Commc'ns, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, 29 FCC Rcd. 10099 ¶¶ 4-5 (MB 2014) ("*Denial of Request for Extension of Time*") (denying Office of Los Angeles Mayor's Request for Extension of Time).

[16] *Commission Announces Extension of Time to File Replies to Responses and Oppositions for Its Review of Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations*, Public Notice, DA 14-1446 (Oct. 3, 2014).

proposed merger transactions."[17] At a minimum, the Commission should ensure that the Content Companies' premise remains true, i.e., that nothing about the review of the Content Companies' various pleadings by the Commission or by any court will be permitted to harm the Commission's transaction review process or the Applicants in any way. As explained above, there is no reason why review of those pleadings should delay, impair, or otherwise impact the *Commission's* review of the documents recently submitted by the Applicants, which the Content Companies concede should be allowed to proceed.

To the extent that review of, or decisions regarding, the Content Companies' pleadings *were* to cause any further delay in the Commission's review of the Transaction, such delay would in fact cause significant harm to the Applicants and others and to the integrity of the Commission's processes. As the Commission has repeatedly recognized, including in this proceeding, "[t]he Commission has an obligation to review proposed transactions as expeditiously as possible, regardless of whether or not delays in the process would result in harm to a party."[18] Moreover, the Commission has previously found that issuing stays in the context of transaction reviews "harm[s] the parties by additionally delaying the realization" of the transactions.[19] Any such harms would severely undermine the Content Companies' Stay Request and Application for Review arguments, which are predicated on the explicit assumption that *no such harm* will be caused to Applicants or others.[20]

Finally, Commission precedent makes clear that the Commission should not delay the pleading cycle in a license transfer proceeding based upon the timing of applicants' responses to information requests. During the Commission's review of the Comcast-NBCUniversal transaction, for example, certain opponents sought to have the Commission extend the pleading cycle because there was allegedly "insufficient time for interested parties to incorporate any meaningful observations and analyses of the Applicants' [information request responses]."[21] The Commission rejected this argument, which improperly conflates the public's Section 309 right to file petitions or comments during the pleading cycle on the applications as accepted for filing by the Commission with the public's access to, and informal opportunity to comment upon,

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[17] Stay Request at ii, 25.

[18] *Denial of Request for Extension of Time* ¶ 7; *see also id.* ("In addition, we find the assertion that no party will be harmed by a two-week extension of the filing deadline to be similarly unpersuasive.").

[19] *Application of Communications Industries, Inc. and Pacific Telesis Group for Consent to Transfer Control of Communications Industries, Inc.*, Memorandum Opinion, File No. 24278-CD-TC-1-85 et al., 1986 WL 291334, ¶ 8 (CCB Mar. 24, 1986) (rejecting motion for stay of bureau order approving first stage of transaction and also noting "concomitant possible adverse effects" of stay on applicant's shareholders); *see also Lockheed Martin Global Telecommunications*, Order, 17 FCC Rcd. 1552 ¶ 13 (IB 2002) (rejecting argument that stay would not harm applicants and noting that applicants "have expended considerable effort and resources to secure necessary approvals and have undertaken complex and costly business steps necessary to complete the transaction").

[20] Stay Request at ii, 25. This is especially true given that, as noted above, this has already been one of the longest comment periods ever in a transaction review proceeding; while we fully respect the Commission's processes and the Bureau's efforts, continuing to move forward without further delays is essential.

[21] *Applications of Comcast Corp., Gen. Elec. Co., and NBC Universal, Inc., for Consent to Assign Licenses or Transfer Control of Licensees*, Order, 25 FCC Rcd. 7521 ¶ 3 (2010).

responses to an information request. The Commission thus ruled that: "We agree with the Applicants that the schedule for the information requests is not, and should not be, tied to the timing of the pleading cycle."[22] The Commission should reject any similar attempts by opponents or other parties to further delay this transaction review process.

III. The Commission Should Reject the Content Companies' Attempt to Grant Themselves an Automatic Stay Using Blanket Objections to Parties Re-Certifying Under the MJPO.

In each of their objections to parties re-certifying under the MJPO filed to date, the Content Companies have objected *on a blanket basis* to virtually all representatives of a particular entity, including all Outside Counsel and all Outside Consultants. The sole basis for these improper objections is the generic argument the Content Companies set forth in their Stay Request and Application for Review, which echo their comments filed in response to the Bureau's *Document Production Public Notice* – namely that the Bureau erred in not employing the prior DOJ-based approach for reviewing programming contracts or the alternative *in camera* approach recommended by the Content Companies.[23] The Commission should make clear that the MJPO does not allow for such blanket objections and should reject all such objections already filed by the Content Companies that do not relate to specific individual MJPO signatories and are not based on a good-faith argument under one of the permitted substantive bases for challenging a re-certified party under the MJPO.

In effect, the Content Companies have attempted *to grant themselves an automatic stay* by (1) objecting to *any* party gaining access to their programming contracts under the MJPO, and (2) suggesting that this kind of blanket objection itself prohibits access to their documents unless and until the objection "is resolved by the Commission and, if appropriate, a court of competent jurisdiction." This position does not withstand scrutiny. The MJPO establishes two criteria for objections – i.e., no involvement in "Competitive Decision-Making" activities; and the person must be an Outside Counsel for a Participant in the proceeding, Outside Consultant, or other eligible party. The blanket objections interposed by the Content Companies are not authorized – let alone *appropriate* – objections and reflect nothing more than their fundamental disagreement

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[22] *Id.* ¶ 7.

[23] *See, e.g.*, Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., et al., *Applications of Comcast Corp. and Time Warner Cable Inc., Charter Commcn's Inc., and SpinCo for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 14-57, at 2-4 (Oct. 15, 2014) (objecting to access by ACA outside counsel and consultants); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., et al., *Applications of Comcast Corp. and Time Warner Cable Inc., Charter Commcn's Inc., and SpinCo for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 14-57, at 2 (Oct. 15, 2014) (objecting to access by Dish and Netflix outside counsel); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., et al., *Applications of Comcast Corp. and Time Warner Cable Inc., Charter Commcn's Inc., and SpinCo for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 14-57, at 2 (Oct. 16, 2014) (objecting to access by Comcast and TWC outside counsel and consultants) ("Comcast-TWC Objections").

with the Media Bureau's ruling. The Content Companies' challenge to that ruling, and requested stay, should be decided on the merits by the Commission. But the Content Companies are not entitled to manufacture their own automatic stay by misapplying and manipulating the MJPO's terms and intent.[24]

The Commission should thus immediately explain that the MJPO does not allow for the filing of such improper blanket objections and should reject all the objections already filed by the Content Companies that do not relate to specific individual MJPO signatories and are not based on a good-faith argument under the two authorized grounds for objection set forth in the MJPO.

And to the extent some of the Content Companies' objections to particular re-certifying parties are based on an authorized ground under the MJPO, these objections pertain and extend to *only* the Content Companies' HCI and VPCI. They do *not* extend to or impair access to other third-parties' HCI. In their objections, the Content Companies acknowledge that, as Third Party Interest Holders, they only "have confidentiality interests in certain of the documents to which access is sought" – i.e., documents relating to the Content Companies' programming agreements.[25] This approach makes perfect sense, as the Content Companies have no standing to assert objections to any other documents in which they do not have a confidentiality interest; therefore, their objections do not affect the rights of any party to access such other confidential or highly confidential information pursuant to the MJPO. This is consistent with the terms of the MJPO.[26]

Moreover, this conclusion is true even if the Content Companies' objection to a particular re-certifying individual is based on an allegation that the individual is involved in Competitive Decision-Making. Again, the MJPO requires that until an objection based on Competitive Decision-Making is resolved, a person subject to such objection shall not have access to the "*relevant* Confidential Information or Highly Confidential Information," not to *all* HCI in the record. The Bureau's specific discussion regarding the Competitive Decision-Making objection underscores this result:

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[24] The Content Companies' claim that Comcast and TWC "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," even if true, is irrelevant and inconsistent with the MJPO, which *expressly allows* such access as long as its terms are satisfied. *See* Comcast-TWC Objections at 3. And their claim that all of the re-certifying Comcast and TWC Outside Counsel should be rejected because the Content Companies believe there are too many of them that would have access to HCI and VPCI, *see id*. at 4-5, is equally wrong; again, as long as these individuals are eligible to certify under, and comply with, the terms and protections of the MJPO, they are entitled to access such HCI and VPCI.

[25] *See, e.g.*, Comcast-TWC Objections at 2, n.4; *see also* MJPO ¶ 2 ("'Third Party Interest Holder' means a person who is not a Submitting Party who has *a confidentiality interest* in a [document].") (emphasis added). *See also* Comcast-TWC Objections at 8-9 (indicating that the re-certifying parties to whom the Content Companies have objected may not access *the Content Companies' HCI or VPCI* until their objections are resolved).

[26] *See* MJPO ¶ 8 ("a person subject to an objection shall not have access to the *relevant* Confidential Information or Highly Confidential Information") (emphasis added).

> 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.[27]

For example, the Content Companies have objected to certain Outside Counsel of different parties for having previously engaged in Competitive Decision-Making based on their asserted role with the negotiation of retransmission consent agreements. While these objections mean that such individuals may not access *the Content Companies' VPCI* until such objections are resolved, they do not preclude such individuals from accessing or reviewing *other HCI* in the record, such as the Applicants' Opposition and economic and engineering experts' declarations in order to prepare their reply comments. To read the MJPO otherwise would mean that a single Content Company or other Third Party Interest Holder could – by simply filing an objection – unilaterally prevent many re-certifying individuals from accessing *any* HCI for a potentially extended time, even if (1) the objection has no credible basis, (2) such Third Party Interest Holder has no standing to object to *other* third-parties' HCI, and (3) such other third parties *themselves* have raised no objection with respect to such re-certifying individuals' access to their HCI.

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In light of the arguments set forth above, the Commission should (1) proceed immediately with its own review of the programming contracts and other HCI and VPCI, so that it can complete the transaction review process within its well-established 180-day timeframe; (2) reject the Content Companies' improper attempt to reargue the Media Bureau's ruling on the MJPO by imposing unauthorized, blanket objections to re-certifying parties; (3) deny these blanket objections; and (4) promptly rule on the remaining objections to specific certifying parties that are based on the authorized grounds in the MJPO.

Respectfully submitted,

/s/ Kathryn A. Zachem	/s/ Catherine Bohigian	/s/ Steven Teplitz
Senior Vice President, Regulatory and State Legislative Affairs Comcast Corporation	Executive Vice President, Government Affairs Charter Communications, Inc.	Senior Vice President, Government Relations Time Warner Cable Inc.

cc: Mace Rosenstein
Laura Flahive Wu

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[27] *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, et al., Order, DA 14-1463, ¶ 8 (MB Oct. 7, 2014) (emphasis added).