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October 20, 2014

VIA ECFS

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th St., SW
Washington DC, 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

Dear Ms. Dortch:

On behalf of RCN Telecom Services, LLC, (“RCN”) this letter responds to the Objections to Requests for Access to Highly Confidential Information and Video Programming Information, filed by Discovery Communications, CBS Corporation and other video programming vendors (collectively the “Objecting Programmers”),¹ in conjunction with the Media Bureau’s Modified Joint Protective Order adopted in the above-captioned docket.² In particular, RCN responds because the Objecting Programmers have failed to comply with the terms, of the Modified Protective Order and have not explained their objection to disclosure of Highly Confidential Information (“HCI”) or Video Programming Confidential Information (“VPCI”) to RCN’s outside counsel at Bingham McCutchen, LLP.

On October 7, the Media Bureau, pursuant to Delegated Authority, adopted the Modified Joint Protective Order to apply enhanced protections to disclosure of VPCI, balancing the

¹ *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorization, Modified Joint Protective Order*, CBS Corp. et al, Objection to Request for Access to Highly Confidential Information and Video Programming Information (filed Oct. 16, 2014); *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorization, Modified Joint Protective Order*, Discovery Communications Objection to Request for Access to Highly Confidential Information and Video Programming Information (filed Oct. 16, 2014).

² *In the Matter of Applications 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 at ¶ 10 (Oct. 7, 2014) (“Modified Joint Protective Order”).

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concerns of video programmers that VPCI was extremely sensitive information and the “public interest in a fair and open review” of the Comcast-TWC and AT&T-DIRECTV transactions.³ The Modified Joint Protective Order limits access to VPCI to outside counsel and its employees and further protects such material by allowing the video programmers to limit review through a special platform that prohibits printing, copying or downloading VPCI that is reviewed.⁴

On behalf of RCN, Bingham McCutchen LLP submitted four acknowledgments of confidentiality consistent with the terms of the Modified Joint Protective Order.⁵ The Objecting Programmers object to providing access to VPCI to RCN’s outside counsel and their employees.⁶

The Objecting Programmers fail to follow the prescribed procedures in the Order which requires the objecting party to identify in its objection “information the objecting party considers relevant to determining whether the individual; in question is involved in “competitive Decision-Making.” The Objecting Programmers instead cite their reasons for generally objecting to the disclosure of HCI and VPCI and offer no other rationale for refusing to provide HCI and VPCI to RCN’s outside counsel.⁷ The Bureau addressed these arguments, however, in the Order and the Modified Joint Protective Order is the result. Further, two days before filing their Objections, the Objecting Programmers filed a Request for a Stay and an Application for Review with respect to the Modified Joint

³ *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, MB Docket Nos. 14-57, 14-90, DA 14-1463 at ¶ 13. (Oct. 7, 2014) (“Order”).

⁴ Modified Joint Protective Order at ¶ 10.

⁵ On October 10, 2014 RCN submitted the Acknowledgement of Confidentiality for Eric J. Branfman, Partner, M. Renee Britt, Paralegal Specialist and David M. Fendig, Administrative Coordinator. On October 15, 2014, RCN submitted an additional Acknowledgement of Confidentiality from Bingham for Joshua M. Bobeck.

⁶ See CBS Corp. Objection at pp. 3-4, Ex. A, Discovery Objection at pp. 3-4, Ex. A.

⁷ See CBS Corp. Objection at pp. 3-4, Discovery Objection at pp. 3-4 (objections rest on “longstanding objection to permitting any individual to access their highly confidential carriage agreements.”) In short, the Objecting Programmers wish to use the Modified Joint Protective Order process as another opportunity to express their displeasure with the Commission’s decision. Such concerns should be confined to their Request for Stay and should not pollute the established procedures governing disclosure of highly confidential material.

Marlene H. Dortch
October 20, 2014
Page 3

Protective Order, raising these concerns again.⁸ The Objection process for addressing claims that individuals may be involved in competitive decision-making, it is not for reviving grievances that the Bureau has already adjudicated with regard to public disclosure. Further, the Modified Joint Protective Order placed the burden on the disclosing party to identify reasons that an individual is engaged in competitive decision-making and should not have access to HCI and VPCI. Failing to disclose its rationale for denying access to RCN's outside counsel, the Objecting Programmers seek to shift the burden to RCN. For avoidance of doubt, I will reiterate that neither I nor any of my colleagues at Bingham McCutchen LLP who have submitted an Acknowledgement of Confidentiality are engaged in competitive decision-making.

Lastly, RCN's Petition to Deny has made the sizable discounts programmers provide to Comcast a central point of its argument why the proposed transactions are not in the public interest. The Commission cannot issue an order addressing this issue while keeping the facts on which it bases its decision hidden from counsel for parties like RCN that may be seriously and adversely affected by the transaction.

For these reasons RCN respectfully asks the Bureau to deny the objections.

Respectfully submitted,

/s/ Eric J. Branfman

Eric J. Branfman

Encl.

⁸ *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, CBS Corporation et al, Emergency Request For Stay Of Media Bureau Order And Associated Modified Protective Orders, MB Docket Nos. 14-57, 14-90, DA 14-1463 at ¶ 13. (Oct. 14, 2014); see also In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, CBS Corporation et al, Application for Review, MB Docket Nos. 14-57, 14-90, DA 14-1463 (Oct. 14, 2014).*