

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

In the Matter of	)	
	)	
Applications of	)	
	)	
Comcast Corporation and Time Warner Cable Inc.	)	
Charter Communications Inc. and SpinCo,	)	MB Docket No. 14-57
	)	
For Consent to Assign Licenses	)	
Or Transfer Control of Licenses	)	
	)	
<hr/>	)	
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 Licenses	)	
	)	

**RESPONSE TO OBJECTIONS TO REQUEST FOR ACCESS TO  
HIGHLY CONFIDENTIAL INFORMATION AND  
VIDEO PROGRAMMING CONFIDENTIAL INFORMATION**

On October 20, 2014, Discovery Communications, LLC (“Discovery”) filed objections in both of the above-captioned dockets seeking to limit the ability of Cogent Communications Group Inc.’s (“Cogent”) *outside counsel and economic consultants* (in the Comcast docket) and Cogent’s *outside counsel* (in the AT&T docket) from accessing Highly Confidential Information (“HCI”) and Video Programming Confidential Information (“VPCI”). A group of content companies—CBS Corporation, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc. (together, the “Content Companies”)—also filed virtually identical objections in both

dockets seeking the same relief. All four objections, insofar as they relate to Cogent's outside counsel and economic consultants, are overbroad and prejudicial and, thus, should be rejected.

1. The individuals representing Cogent who have signed and filed an Acknowledgement of Confidentiality pursuant to the Modified Joint Protective Order in each transfer proceeding do not include any Cogent employees or anyone with "competitive decision-making" authority.
2. Neither the Discovery Objection nor the Content Companies' Objection state any basis to believe that Cogent's outside counsel and economic consultants will not adhere to the requirements of the Modified Joint Protective Order.
3. Cogent's outside counsel and economic consultants understand and respect the competitively sensitive nature of Discovery's and the Content Companies' interest in limiting disclosure of their carriage agreements and associated negotiation documents (*i.e.*, VPCI). In fact, Cogent's outside counsel and economic consultants have not sought access to VPCI documents, nor do they intend to do so.
4. The problem is that Discovery's and the Content Companies' Objections go beyond VPCI.
  - a. With respect to the Comcast transaction, Discovery states: "Discovery objects to providing **HCI** and VPCI to the Submitting Individuals [which include Cogent's outside counsel and economic consultants]." Discovery Objections at 3 (emphasis added).
  - b. With respect to the AT&T transaction, Discovery states: "[Discovery] object[s] to providing **HCI** and VPCI to (1) each of the Remaining Submitting Individuals

[which include Cogent’s outside counsel].” Discovery Objections at 4 (emphasis added).

- c. With respect to the Comcast transaction, the Content Companies state: “[T]he Content Companies object to providing **HCI** and VPCI to the Submitting Individuals [which include Cogent’s outside counsel and economic consultants].” Content Companies’ Objections at 3 (emphasis added).
  - d. With respect to the AT&T transaction, the Content Companies state: “[T]he Content Companies object to providing **HCI** and VPCI (1) to each of the Remaining Submitting Individuals [which include Cogent’s outside counsel].” Content Companies’ Objections at 4 (emphasis added).
5. As evident from the foregoing, the Objections, in an effort to protect Discovery’s and the Content Companies’ legitimate interests in minimizing disclosure of VPCI, seek a far broader and unjustified remedy. Specifically, they seek to bar Cogent’s outside counsel and economic consultants from access to **any HCI**, even including HCI produced by parties or non-parties other than the objectors.
  6. There is no basis for such a draconian remedy.
  7. There is also a solution. The Commission could revisit its decision to treat access to HCI and VPCI as coterminous for purposes of the Acknowledgments of Confidentiality. In particular, by trifurcating the Acknowledgements of Confidentiality into Confidential Information, Highly Confidential Information and Video Programming Confidential Information, the Commission can ensure that persons such as Cogent’s outside counsel and economic consultants—who, as noted, have not sought and do not intend to seek

access to VPCI—are not unjustly precluded from accessing other forms of HCI that are directly relevant to issues raised in Cogent’s submissions in both transfer proceedings.

8. Regardless of whether the Commission adopts the “fix” proposed in paragraph 7, *supra*, or opts for a different solution, there is no basis to deny Cogent’s outside counsel and economic consultants access to HCI that does not include VPCI. This is both critical and time-sensitive, because if the relief sought in the Objections is granted then Cogent will be materially prejudiced in its ability to fully present its replies in support of its petition to deny (Comcast) and comments (AT&T).
9. Accordingly, insofar as it relates to Cogent’s outside counsel and economic consultants, the relief requested in the Objections should be denied promptly.

Dated: October 21, 2014

Respectfully submitted,

/s/ Robert M. Cooper

Robert M. Cooper  
James P. Denvir  
Richard A. Feinstein  
Joshua Riley  
Hershel A. Wancjer  
Nicholas A. Widnell  
Martha L. Goodman  
BOIES, SCHILLER & FLEXNER LLP  
5301 Wisconsin Avenue, N.W.  
Washington, D.C. 20015  
(202) 237-2727

*Counsel to Cogent Communications Group,  
Inc.*

## CERTIFICATE OF SERVICE

I, Hershel A. Wancjer, hereby certify that on this 21<sup>st</sup> day of October, 2014, I caused true and correct copies of the foregoing RESPONSE TO OBJECTIONS TO REQUEST FOR ACCESS TO HIGHLY CONFIDENTIAL INFORMATION AND VIDEO PROGRAMMING CONFIDENTIAL INFORMATION to be filed via the Federal Communications Commission's ECFS and served by electronic mail or U.S. mail to the following:

Mace Rosenstein  
Derek Ludwin  
COVINGTON & BURLING LLP  
1207 Pennsylvania Ave, NW  
Washington, DC 20004  
dludwin@cov.com  
mrosenstein@cov.com  
*Counsel for Discovery Communications*

Matthew A. Brill  
LATHAM & WATKINS LLP  
555 11<sup>th</sup> Street, NW, Suite 1000  
Washington, DC 20004  
matthew.brill@lw.com  
*Counsel for Time Warner Cable, Inc.*

John L. Flynn  
JENNER & BLOCK  
1099 New York Ave., NW  
Washington, DC 20001  
jflynn@jenner.com  
*Counsel for Charter Communications, Inc.*

Ellen Stutzman  
WRITERS GUILD OF AMERICA, WEST  
7000 West Third Street  
Los Angeles, CA 90048  
estutzman@wga.org

Andrew Jay Schwartzman  
600 New Jersey Ave., NW, Room 3123  
Washington, DC 20001  
andyschwartzman@gmail.com  
*Counsel for Zoom Telephonics, Inc.*

Andrew W. Guhr  
STEPTOE & JOHNSON LLP  
1330 Connecticut Ave, NW  
Washington, DC 20036  
aguhr@steptoe.com  
*Counsel for DISH Network*

Francis M. Buono  
WILLKIE FARR & GALLAGHER LLP  
1875 K Street, NW  
Washington, DC 20006  
fbuono@willkie.com  
*Counsel for Comcast Corp.*

Helen M. Mickiewicz  
CALIFORNIA PUBLIC UTILITY COMM'N  
505 Van Ness Ave.  
San Francisco, CA 94102  
hmm@cpuc.ca.gov

Lauren M. Wilson  
FREE PRESS  
1025 Connecticut Ave., NW, Suite 1110  
Washington, DC 20036  
lwilson@freepress.net

Joshua M. Bobeck  
BINGHAM MCCUTCHEN LLP  
2020 K Street, NW  
Washington, DC 20006  
josh.bobek@bingham.com  
*Counsel for RCN Telecom*

Tom Davidson  
AKIN GUMP STRAUSS HAUER & FELD LLP  
1333 New Hampshire Ave., NW  
Washington, DC 20036  
tdavidson@akingump.com  
*Counsel for Monumental Sports & Entm't*

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  
191 M Street, NW  
Washington, DC 20036  
wwiltshire@hwglaw.com  
*Counsel for DIRECTV*

Anne Lucey  
CBS CORPORATION  
601 Pennsylvania Ave., NW  
Suite 540  
Washington, DC 20004

Susan L. Fox  
THE WALT DISNEY COMPANY  
425 Third Street, SW  
Suite 1100  
Washington, DC 20024

Jared S. Sher  
TWENTY FIRST CENTURY FOX, INC.  
400 N. Capitol Street, NW  
Suite 890  
Washington, DC 20001

Kimberly Hulseley  
SCRIPPS NETWORKS INTERACTIVE, INC.  
5425 Wisconsin Ave, 5<sup>th</sup> Floor  
Chevy Chase, MD 20815

Susan M. Mort  
TIME WARNER INC.  
800 Connecticut Avenue, NW  
Suite 1200  
Washington, DC 20006

Christopher G. Wood  
UNIVISION COMMUNICATIONS, INC.  
5999 Center Drive  
Los Angeles, CA 90045

Keith R. Murphy  
VIACOM INC.  
1501 M Street, NW  
Suite 1100  
Washington, DC 20005

/s/ Hershel A. Wancjer  
Hershel A. Wancjer