

**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,<sup>1</sup> CBS Corporation, 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.<sup>2</sup> Notice of these Acknowledgements was posted October 16, 2014 on the Commission website. As far as the Content Companies are aware, no other Acknowledgments seeking access to HCI or VPCI

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<sup>1</sup> *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.

<sup>2</sup> 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**.

were posted to the Commission Website on October 16, 2014.<sup>3</sup> The Content Companies object to the disclosure of HCI or VPCI produced by any party to any of the Submitting Individuals.

**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.

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

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

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<sup>3</sup> 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.

Markham Erickson, Andrew Guhr, Damon Kalt, Georgios Leris, James Hobbs, and Sarah Leggin have sought access to HCI and VPCI. They should not be permitted to access such information.

Markham Erickson, Andrew Guhr, Damon Kalt, Georgios Leris, James Hobbs, and Sarah Leggin are employed by the law firm Steptoe Johnson LLP (“Steptoe”), the same firm that is representing DISH Network in this proceeding. As referenced in the Content Companies’ prior objections in a related proceeding, Steptoe attorneys who have filed Acknowledgments of Confidentiality in these proceedings are engaged in Competitive Decision-Making.<sup>4</sup> Steptoe advises clients on distribution and retransmission consent matters.<sup>5</sup> To counsel on retransmission consent matters, attorneys necessarily must consult with their colleagues concerning Competitive Decision-Making matters. Thus it is highly unlikely that counsel who lobby and advocate on Competitive Decision-Making matters for DISH, a Steptoe client that has a history of at least being negligent in its handling of sensitive documents in litigation and before the Commission,<sup>6</sup> would have no interaction on Competitive Decision-Making matters with attorneys representing another content distributor in these proceedings.

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<sup>4</sup> See Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, MB Docket No. 14-57 (Oct. 15, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, MB Docket No. 14-57 (Oct. 16, 2014).

<sup>5</sup> Steptoe Johnson LLP, 2013 Lobbying Disclosure Act Report, No. 16.

<sup>6</sup> See, e.g., Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, MB Docket No. 14-57 (Oct. 15, 2014), at 2-4; Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, MB Docket No. 14-57 (Oct. 16, 2014), at 5-7.

For the reasons stated herein, the Content Companies object to providing HCI and VPCI to the Submitting Individuals. 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, 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  
Andrew Soukup  
Laura Flahive Wu  
COVINGTON & BURLING LLP  
1201 Pennsylvania Ave., N.W.  
Washington, DC 20004-2401  
(202) 662-6000

*Their counsel*

October 21, 2014

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

1. Markham C. Erickson, Outside Counsel for Netflix
2. Andrew W. Guhr, Outside Counsel for Netflix
3. Damon Kalt, Outside Counsel for Netflix
4. Georgios A. Leris, Outside Counsel for Netflix
5. James M. Hobbs, Employee to Outside Counsel for Netflix
6. Sarah K. Leggin, Outside Counsel for Netflix

## **EXHIBIT B**

Andrew W. Guhr  
202 429 1359  
aguhr@steptoe.com

Steptoe  
STEPTOE & JOHNSON LLP

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
202 429 3000 main  
www.steptoe.com

October 15, 2014

*By ECFS*

William Lake  
Chief, Media Bureau  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

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

Dear Mr. Lake:

On behalf of Netflix, Inc. ("Netflix") enclosed are executed copies of the Acknowledgements of Confidentiality required by the Media Bureau's Modified Joint Protective Orders (DA 14-1465) for access to Confidential and Highly Confidential documents filed in the above-referenced docket. The executors of the enclosed Acknowledgements are outside counsel for Netflix who are filing or refiling their Acknowledgements pursuant to the Modified Joint Protective Order in order to obtain access to Confidential and Highly Confidential Information, and inside counsel for Netflix who is refiling her Acknowledgment to obtain access to Confidential Information.

Sincerely,



Andrew W. Guhr  
*Counsel for Netflix, Inc.*

Enclosures

## ATTACHMENT B

## Acknowledgment of Confidentiality

MB Docket No. 14-90

I am seeking access to [ ] only Confidential Information or [X] 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 15th day of October, 2014.



Markham C. Erickson

Partner

Steptoe & Johnson LLP

202-429-8032

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Andrew W. Guhr  
Associate  
Steptoe & Johnson LLP  
202-429-1359

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Executed this 15th day of October, 2014.



Damon Kalt  
Associate  
Steptoe & Johnson LLP  
202-429-8085

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Executed this 15th day of October, 2014.



Georgios A. Leris  
Attorney  
Steptoe & Johnson LLP  
202-327-6940

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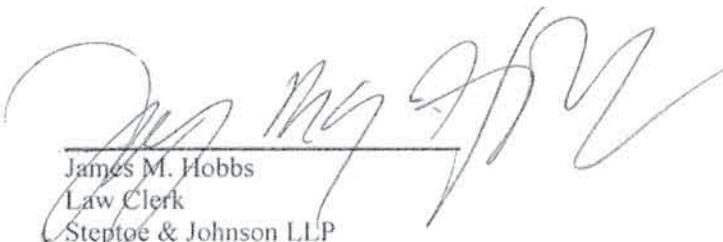
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Executed this 15th day of October, 2014.



James M. Hobbs  
Law Clerk  
Steptoe & Johnson LLP  
202-429-8179

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MB Docket No. 14-90

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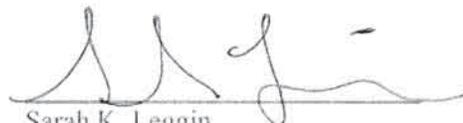
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Executed this 15th day of October, 2014.



Sarah K. Leggin  
Associate  
Steptoe & Johnson LLP  
202-429-6252

## CERTIFICATE OF SERVICE

I, Mace Rosenstein, hereby certify that on this 21st 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*

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

By: /s/ Mace Rosenstein  
Mace Rosenstein