

**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	)	
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	)	

**CONTENT COMPANIES' COMMENTS REGARDING  
COGENT COMMUNICATIONS GROUP'S RESPONSE TO  
OBJECTION TO REQUEST FOR ACCESS TO HIGHLY CONFIDENTIAL  
INFORMATION AND VIDEO PROGRAMMING CONFIDENTIAL INFORMATION**

CBS Corporation, Discovery Communications, LLC, 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"), submit these comments regarding the Response filed in the captioned proceedings on October 21, 2014, by Cogent Communications Group Inc. ("Cogent").<sup>1</sup>

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<sup>1</sup> Response to Objection to Request For Access To Highly Confidential Information and Video Programming Confidential Information filed by Cogent Communications Group, Inc., MB Docket Nos. 14-57, 14-90 (Oct. 21, 2014) ("Cogent Response").

To be clear, the Content Companies do not seek to delay the Commission’s review of the captioned transactions. The Content Companies also do not seek to impede the Commission’s access to Confidential Information, Highly Confidential Information (“Highly Confidential Information”), or Video Programming Confidential Information (“VPCI”). The Content Companies, which are not parties to the proposed transactions, seek only to protect their affiliation and distribution agreements and related negotiation materials from being disclosed to third parties.<sup>2</sup>

Accordingly, if given the option, the Content Companies would object to Acknowledgments of Confidentiality only to the extent that a requesting individual seeks access to VPCI. For example, the Content Companies have not objected to any individuals who seek access only to Confidential Information, because such individuals by definition cannot access VPCI.

However, the Modified Joint Protective Orders<sup>3</sup> do not appear to permit this approach. Instead, under the Modified Joint Protective Orders, any individual who seeks access to HCI is also entitled to access VPCI.<sup>4</sup> The form of Acknowledgment under the Modified Joint Protective Orders does not permit requesting individuals to indicate whether they seek access to

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<sup>2</sup> See Application for Review of the Content Companies, MB Docket Nos. 14-57, 14-90 (Oct. 14, 2014) (“Application for Review”), at 14-25.

<sup>3</sup> Modified Joint Protective Order, DA 14-1464 (MB Oct. 7, 2014); Modified Joint Protective Order, DA 14-1465, (MB Oct. 7, 2014) (collectively, “Modified Joint Protective Orders”).

<sup>4</sup> Modified Joint Protective Orders, ¶ 2 (defining VPCI to include, among other things, any information that is HCI); *see also* Order, DA 14-1463, ¶ 11 (MB Oct. 7, 2014) (“Once an individual has executed an Acknowledgment under the Modified Joint Protective Orders and any objections have been resolved, permitting access to [HCI], the individual will also be permitted to review VPCI ....”).

VPCI or whether they seek access only to other, non-VPCI, HCI.<sup>5</sup> As a result, to prevent the risk of disclosure of their highly sensitive programming agreements and related negotiation materials, under the Modified Joint Protective Orders, the Content Companies find themselves in the position of having to object to each individual who requests access to HCI, even if that individual has no intention of accessing VPCI.

The Content Companies therefore welcome Cogent’s proposal for “trifurcation” of confidential information.<sup>6</sup> While the Content Companies continue to object to permitting any third party to access their VPCI,<sup>7</sup> the Content Companies have no similar categorical objection with regard to third-party access to their non-VPCI HCI.

As a result, if Cogent’s “trifurcation” approach is adopted, the Content Companies will withdraw the objections they have asserted against such individuals that have the effect of preventing those individuals from accessing non-VPCI HCI. For example, if Cogent’s Outside Counsel certify that they will not access VPCI, then the Content Companies will withdraw the objections they have asserted against Cogent’s Outside Counsel that currently have the effect of preventing those individuals from accessing non-VPCI HCI. This commitment is conditioned on

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<sup>5</sup> Modified Joint Protective Orders, App’x B.

<sup>6</sup> See Cogent Response, ¶ 7.

<sup>7</sup> As explained more thoroughly in their Application for Review, allowing *any* individual access to the Content Companies’ VPCI under the Modified Joint Protective Order would violate both the Trade Secrets Act and the Commission’s rules. Application for Review of the Content Companies, MB Docket Nos. 14-57, 14-90 (Oct. 14, 2014) (“Application for Review”), at 14-25. As set forth in the Application for Review, if third-party access to VPCI is permitted at all—which the Content Companies maintain should not occur—such access should not be permitted unless (1) the VPCI has been deemed necessary by the Commission to be placed in the public record and has been redacted and anonymized, and (2) Outside Counsel or Outside Consultants who are not engaged in Competitive Decision-Making and who seek access to VPCI have made a particularized, good-faith showing why their need to access VPCI promotes the public interest and assists the Commission with its review of the captioned transactions. *Id.* at 13-14.

the assumption that the Applicants have implemented—as they suggest they have<sup>8</sup>—a procedure that would prohibit any third-party individuals from accessing VPCI but would permit individuals to access other, non-VPCI HCI.<sup>9</sup>

Respectfully submitted,

**CBS CORPORATION, DISCOVERY  
COMMUNICATIONS, LLC, SCRIPPS  
NETWORKS INTERACTIVE, INC., THE  
WALT DISNEY COMPANY, TIME WARNER  
INC., TWENTY FIRST CENTURY FOX, INC.,  
UNIVISION COMMUNICATIONS INC., AND  
VIACOM INC.**

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October 22, 2014

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<sup>8</sup> See Letter from Kathryn A. Zachem, Comcast Corporation, et al., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57 (Oct. 20, 2014), at 4.

<sup>9</sup> The Content Companies would continue to stand by the particularized objections they have asserted.

## CERTIFICATE OF SERVICE

I, Mace Rosenstein, hereby certify that on this 22nd day of October, 2014, I caused true and correct copies of the foregoing Content Companies' Comments to Cogent Communication Group's Response To 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:

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