

**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)

**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,¹ Discovery Communications, LLC (“Discovery”) hereby objects to the requests 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.² Notice of

¹ *In the Matter of Application 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 (Oct. 7, 2014). All capitalized terms not otherwise defined herein are defined in the Modified Joint Protective Order.

² A copy of the Acknowledgments (and the cover letter that accompanied the Acknowledgments) is attached hereto as **Exhibit B**. One of the individuals—Andrew Guhr—is listed as having filed two Acknowledgments on behalf of DISH Network. Discovery’s previous objection to Mr. Guhr’s Acknowledgment was filed on October 15, 2014. Objection to Request For Access to Highly Confidential Information and Video Programming Confidential Information filed by Discovery, MB Docket No. 14-57 (Oct. 15, 2014), at 2-3.

these Acknowledgements was posted to the Commission website on or after October 17, 2014.³ Discovery objects to the disclosure of HCI or VPCI produced by any party to the Submitting Individuals (and any of the Submitting Individuals' respective employees, as those terms are defined in Paragraph 13 of the Modified Joint Protective Order).⁴

I. None of the Submitting Individuals Should Be Permitted To Access HCI or VPCI.

Discovery's objection rests on its longstanding objection to permitting *any* individual to access its 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 HCI or 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 Discovery's VPCI. The substance of this objection is set forth more fully in the Application for Review filed in the captioned proceeding on October 14, 2014.

II. Discovery Specifically Objects to Disclosure of HCI and VPCI to One of The Submitting Individuals.

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

³ Some of these Acknowledgements are dated October 16, 2014, but were only posted to the Commission website on October 21, 2014. Discovery prepared and filed these objections as promptly as possible.

⁴ Under the Modified Joint Protective Order, Discovery is entitled to object to the Submitting Parties' requests for access because it is a Third Party Interest Holder and has a confidentiality interest in certain of the documents to which access is sought.

Dwayne Robinson has sought access to HCI and VPCI as an employee of Outside Consultants working for The Brattle Group, who seek access to HCI and VPCI on behalf of DISH Network. DISH's counsel has urged the Commission to protect sensitive, proprietary information in the context of a different proposed merger. In connection with a proposed transaction to which DISH was a party, its counsel warned that the "inadvertent or intentional" disclosure of proprietary data to competitors "would have a devastating effect on [DISH's] business and place the companies at a significant competitive disadvantage." Discovery shares that very concern with regard to disclosure of HCI and VPCI in this proceeding. Accordingly, Mr. Robinson should not be permitted to access such information on behalf of DISH.

* * *

For the reasons stated herein, Discovery objects to providing HCI and VPCI to the Submitting Individuals.⁵ 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.

⁵ As stated more fully in an October 22, 2014, filing, if the Commission adopts the "trifurcation" approach proposed by Cogent Communications Group, Discovery will withdraw the objections it has asserted against the Submitting Individuals that have the effect of preventing those individuals from accessing non-VPCI HCI. *See* Content Companies' Comments Regarding Cogent Communications Group's Response to Objection To Request for Access To Highly Confidential Information and Video Programming Confidential Information, MB Docket Nos. 14-57, 14-90 (Oct. 22, 2014), at 3-4. This commitment is conditioned on the assumption that the Applicants have implemented—as they suggest they have, *see id.*—a procedure that would prohibit any third-party individuals from accessing VPCI but would permit individuals to access other, non-VPCI HCI. This commitment does not apply to Mr. Robinson and Mr. Guhr, against whom Discovery has asserted additional, particularized objections.

Respectfully submitted,

DISCOVERY COMMUNICATIONS, LLC

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

Its counsel

October 22, 2014

EXHIBIT A
Submitting Individuals

1. Andrew W. Guhr, Outside Counsel for DISH Network
2. Andrew Crain, Outside Counsel for CenturyLink
3. Dwayne Robinson, Employee of Outside Consultant for DISH Network

EXHIBIT B

Andrew W. Guhr
202 429 1359
aguhr@step toe.com

Step toe
STEP TOE & JOHNSON LLP

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

October 16, 2014

BY ECFS

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

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

Dear Mr. Lake:

On behalf of DISH Network Corporation ("DISH") enclosed is an executed copy of the Acknowledgements of Confidentiality required by the Media Bureau's Modified Joint Protective Orders (DA 14-1464) for access to Confidential and Highly Confidential documents filed in the above-referenced docket. The executor of the enclosed Acknowledgement is an employee of outside consultants for DISH who will be assisting them in organizing, filing, coding, converting, storing, and retrieving documents and data connected with this proceeding. The executor is filing his Acknowledgement pursuant to the Modified Joint Protective Order in order to obtain access to Confidential and Highly Confidential Information.

Sincerely,



Andrew W. Guhr
Counsel for DISH Network Corporation

Enclosures

ATTACHMENT B

Acknowledgment of Confidentiality

MB Docket No. 14-57

I am seeking access to only Confidential Information or 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 8th day of October, 2014.



Dwayne Robinson
Systems and Infrastructure Engineer
The Brattle Group
617.234.5719



Tiffany West Smink
10th Floor
1801 California Street
Denver, CO 80202
Phone 303-992-2508
Facsimile 303-896-1107
tiffany.smink@centurylink.com

Associate General Counsel

Via ECFS

October 16, 2014

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

Re: *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations* – MB Docket No. 14-57 – Acknowledgments of Confidentiality

Dear Ms. Dortch:

Pursuant to paragraph 7 of the Modified Joint Protective Order,¹ CenturyLink hereby submits to the Commission for filing with the Media Bureau in the above-captioned proceeding an executed Attachment B, Acknowledgment of Confidentiality, MB Docket No. 14-57, for each of the following CenturyLink employees:

- Tiffany West Smink
- Marjorie Herlth
- Ross Dino

These CenturyLink employees all seek access to confidential information submitted in MB Docket No. 14-57.

Additionally, CenturyLink hereby submits an executed Attachment B, Acknowledgment of Confidentiality for the following member of Armstrong Teasdale, its outside counsel in MB Docket No. 14-57:

- Andrew Crain

¹ *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Modified Joint Protective Order, DA 14-1464 (Oct. 7, 2014).

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Mr. Crain seeks access to confidential and highly confidential information submitted in MB Docket No. 14-57.

Also pursuant to paragraph 7, CenturyLink is serving copies of its executed confidentiality acknowledgments on the Office of General Counsel's Transaction Team and counsel for the Applicants as indicated in the enclosed Certificate of Service.

If you have any questions regarding this correspondence, please contact the undersigned using the contact information reflected in the letterhead.

Sincerely,

/s/ Tiffany West Smink

Enclosures

cc: William Lake - FCC Media Bureau (William.lake@fcc.gov)
OGC Transaction Team (TransactionTeam@fcc.gov)
Persons Listed on Certificate of Service

ATTACHMENT B

Acknowledgment of Confidentiality

MB Docket No. 14-57

I am seeking access to only Confidential Information or 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 18TH day of OCTOBER, 2014.



[Name] ANDREW CRAN
[Position] PARTNER
[Firm] ARMSTRONG TEASDALE
[Telephone] 303-629-5688

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 Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information to be served by Federal Express and electronic mail to the following:

Matthew A. Brill
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By: /s/ Mace Rosenstein
Mace Rosenstein