

**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 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”) hereby object 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 Seven of the Submitting Individuals are Outside Counsel or Outside Consultants for Comcast, a party to the

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**.

proposed transaction (the “Comcast Submitting Individuals”). The remaining Submitting Individual is not affiliated with any of the parties to the proposed transaction (the “Remaining Submitting Individual”). Notice of these Acknowledgements was posted to the Commission website on or after October 20, 2014.³

In the case of the Comcast Submitting Individuals, the Content Companies object to the disclosure of HCI or VPCI produced by any party other than Comcast to the Comcast Submitting Individuals (and any of the Comcast Submitting Individuals’ respective employees, as those terms are defined in Paragraph 13 of the Modified Joint Protective Order).⁴ The Content Companies object to the disclosure of HCI or VPCI produced by any party to the Remaining Submitting Individual (and any of the Submitting Individual’s employees, as those terms are defined in Paragraph 13 of the Modified Joint Protective Order).

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 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

³ Some of these Notices were dated October 15, but were not posted to the Commission Website until October 22. The Content Companies prepared and filed these objections as promptly as possible.

⁴ Under the Modified Joint Protective Order, the Content Companies are entitled to object to the Submitting Parties’ requests for access because they are Third Party Interest Holders and have confidentiality interests in certain of the documents to which access is sought.

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.

This objection is applicable even though the Comcast Submitting Individuals are affiliated with a party to the proposed transaction. The Content Companies' HCI and VPCI are subject to strict restrictions on access. The Comcast Submitting Individuals have made no showing that they would be entitled to access the Content Companies' HCI and VPCI in the absence of the Commission's grant of access to such information in this proceeding. Indeed, under the confidentiality provisions of many carriage agreements, most (if not all) of the employees of a third-party purchaser of one of the parties to a carriage agreement are prohibited from knowing the terms of that agreement until after the purchase closes—and even then, access to the agreement's terms may continue to be tightly restricted.

It makes no difference whether Comcast or any of the Comcast Submitting Individuals would be entitled to access to HCI and VPCI if the proposed transaction closes; there is no guarantee that it will, and the Content Companies do not believe any of the Comcast Submitting Individuals currently has the right to access the Content Companies' HCI and VPCI.⁵

⁵ In other proceedings, Comcast has taken the position that its highly confidential information should be entitled to enhanced protection because it contains some of its "most sensitive business information" and "[d]isclosure of this material to [Comcast's] competitors and/or parties with whom [Comcast does] business ... would have a series negative effect on their business and place [Comcast] at a significant competitive disadvantage." Letter from Michael H. Hammer, Counsel for Comcast Corporation, et al., to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 10-56 (Filed Apr. 27, 2010); *see also* Letter from Michael H. Hammer, Counsel to SpectrumCo LLC, et al., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (filed Feb. 9, 2012); *In re Joint Petition for Declaratory Ruling That the Liberty Order Does Not Authorize Third-Party Subpoenas*, filed by Comcast Corp., et al, MB Docket No. 11-14 (submitted Jan. 12, 2011), at 10.

Moreover, even if Comcast or some Comcast Submitting Individuals would otherwise have a right to access this information, it cannot be the case that 52 Outside Counsel (from three different law firms) and 24 Outside Consultants⁶—plus their employees—need access to the Content Companies’ most sensitive information, including VPCI, to provide legal or consulting services to Comcast in connection with the Commission’s review of the proposed transaction. The volume of individuals seeking access to the Content Companies’ HCI and VPCI increases the likelihood of even inadvertent misuse of that information and makes it more difficult to detect the source of any improper use of that information. And the fact that some subset of one of the transaction parties’ lawyers may have had access to certain agreements of the other parties does not justify access for *all* lawyers for both parties to *all* agreements. Otherwise, if the transactions do not close, there is an unacceptably high risk that one transaction party may later use for its benefit the terms of the other transaction party’s deals.

For the reasons stated herein, the Content Companies object to providing HCI and VPCI (1) to the Remaining Submitting Individual, and (2) to each of the Comcast Submitting Individuals, to the extent that such individuals seek access to confidential information produced by parties other than Comcast.⁷ A copy of this Objection is being provided to the Submitting

⁶ These totals include the 45 Outside Counsel and 24 Outside Consultants who were the subject of the Content Companies’ October 16 objection filed in this proceeding. *See* Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, MB Docket No. 14-57 (Oct. 16, 2014).

⁷ As the Content Companies stated in an October 22, 2014, filing, if the Commission adopts the “trifurcation” approach proposed by Cogent Communications Group, the Content Companies will withdraw the objections they have 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 (continued...)

Individuals' counsel, placing their 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, 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.**

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 23, 2014

procedure that would prevent any third-party individuals from accessing VPCI but would permit them to access other, non-VPCI HCI.

EXHIBIT A
Submitting Individuals

1. Joshua Bobeck, Outside Counsel for RCN Telecom
2. Jessica Feinberg Greffenius, Outside Counsel for Comcast
3. Brenna Sparks, Outside Counsel for Comcast
4. Michael DeCesant, Outside Counsel for Comcast
5. Daniel Schmierer, Outside Counsel for Comcast
6. Andrew Hanebutt, Outside Counsel for Comcast
7. Dennis Carlton, Outside Counsel for Comcast
8. Nauman Ilias, Outside Counsel for Comcast

EXHIBIT B

October 15, 2014

VIA ELECTRONIC FILING

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

Pursuant to the Modified Joint Protective Order in the above-referenced proceeding,¹ Comcast Corporation (“Comcast”) submits Acknowledgments of Confidentiality of certain of its Outside Counsel representing Comcast in this proceeding and certain Outside Consultants retained for the purpose of assisting counsel in this proceeding. Comcast’s Outside Counsel and Outside Consultants seek access to Confidential and Highly Confidential information previously filed or that may be filed in this proceeding by parties that have submitted Acknowledgments of Confidentiality (collectively, the “Submitting Parties”).

As stated in the attached Certificate of Service, both a copy of this letter and the signed Acknowledgments of Confidentiality have been served on counsel for the Submitting Parties.

Kindly direct any questions regarding this submission to the undersigned.

¹ *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 14-464 (Oct. 7, 2014) (“Modified Joint Protective Order”).*

Ms. Marlene Dortch
October 15, 2014
Page 2

Respectfully submitted,

/s/ Melanie A. Medina
Melanie A. Medina
Counsel for Comcast 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.

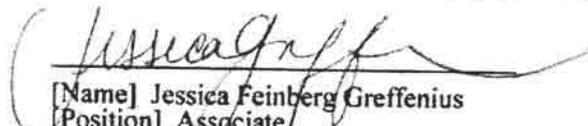
Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained 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 8 day of October, 2014


[Name] Jessica Feinberg Greffenius
[Position] Associate
[Firm] Willkie Farr & Gallagher LLP
[Telephone] 202-303-1272

ATTACHMENT B
Acknowledgment of Confidentiality
MB Docket No. 14-57

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Executed this 13 day of October, 2014



[Name] Brenna Sparks
[Position] Associate
[Firm] Willkie Farr & Gallagher LLP
[Telephone] 202-303-1145

ATTACHMENT B

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MB Docket No. 14-57

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Executed this 13 day of October, 2014

Michael De Cesari

[Name]	Michael De Cesari
[Position]	Principal
[Firm]	Cornerstone Research
[Telephone]	415-229-8108

ATTACHMENT B

Acknowledgment of Confidentiality

MB Docket No. 14-57

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Executed this 9 day of October, 2014.



Daniel Schmierer
Manager
Cornerstone Research
213-553-2558

ATTACHMENT B**Acknowledgment of Confidentiality****MB Docket No. 14-57**

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Executed this 14th day of October, 2014.


Andrew Hanebutt
Research Associate
Cornerstone Research
415.229.8221

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MB Docket No. 14-57

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Executed this 10 day of Oct, 2014

Dennis L Carlton

[Name] Dennis Carlton
[Position] Senior Managing Director
[Firm] Compass Lexecon
[Telephone] (202) 589-3461

ATTACHMENT B

Acknowledgment of Confidentiality

MB Docket No. 14-57

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Executed this 13 day of October, 2014.


 [Name] NAUMAN ILIAS
 [Position] SR. VICE PRESIDENT
 [Firm] COMPASS LEXICON
 [Telephone] 202-571-3435

CERTIFICATE OF SERVICE

I, Mace Rosenstein, hereby certify that on this 23rd 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
LATHAM & WATKINS LLP
555 11th Street, NW, Suite 1000
Washington, DC 20004
matthew.brill@lw.com
Counsel for Time Warner Cable, Inc.

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

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

Eric J. Branfman
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006-1806
eric.branfman@bingham.com
Counsel for RCN Telecom

By: /s/ Mace Rosenstein
Mace Rosenstein