

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Applications of Comcast Corp.,)	MB Docket No. 14-57
Time Warner Cable Inc., Charter)	
Communications, Inc., and SpinCo)	
)	
For Consent to Assign or Transfer)	
Control of Licenses and Authorizations)	
)	
Applications of AT&T, Inc. and)	MB Docket No. 14-90
DIRECTV)	
)	
For Consent to Assign Licenses Or)	
Transfer Control of Licenses)	

**RESPONSE OF NETFLIX, INC. TO OBJECTIONS TO REQUEST
FOR ACCESS TO HIGHLY CONFIDENTIAL INFORMATION AND
VIDEO PROGRAMMING CONFIDENTIAL INFORMATION**

Pursuant to the Order adopting the *Modified Joint Protective Orders* in the above-captioned proceeding,¹ Netflix, Inc. (“Netflix”) submits this response to the objections filed by Discovery Communications LLC (“Discovery”)² and the Content Companies (together with

¹ Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, *Order*, MB Docket Nos. 14-57, 14-90, DA 14-1463 (Oct. 7, 2014) (the “*Order*”); Applications 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) (“*MJPO 14-57*”); Applications 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) (“*MJPO 14-90*”).

² Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications LLC, MB Docket No. 14-57 (Oct. 15, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications LLC, MB Docket No. 14-57 (Oct. 16, 2014); Objection to Request for Access to Highly Confidential Information and

Discovery, the “Programmers”) to requests for access to Highly Confidential Information and Video Programming Confidential Information submitted by or on behalf of Netflix (collectively, the “Objections”).³

The Objections raise no material question of fact about whether Netflix’s outside counsel and experts (the “Netflix Submitting Individuals”) are engaged in Competitive Decision-Making, as defined by the Commission’s *Modified Joint Protective Orders*. Instead, the Programmers’ primary contention appears to be their disagreement with the Commission’s decision adopting the *Modified Joint Protective Orders*, making the Objections nothing more than the pretext for a collateral attack on that decision.⁴ In sum, the Objections fail to make a *prima facie* showing and should be denied.

Video Programming Confidential Information of Discovery Communications LLC, MB Docket Nos. 14-57, 14-90 (Oct. 21, 2014).

³ Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., MB Docket No. 14-57 (Oct. 15, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., MB Dockets No. 14-57 (Oct. 16, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., MB Docket Nos. 14-57, 14-90 (Oct. 21, 2014).

⁴ The Content Companies have filed an Application for Review and an Emergency Request for Stay of the Media Bureau Order and Associated Modified Protective Orders. Application for Review of CBS Corporation, Discovery Communications, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket Nos. 14-57, 14-90 (Oct. 15, 2014); Emergency Request for Stay of Media Bureau Order of CBS Corporation, Discovery Communications, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket Nos. 14-57, 14-90 (Oct. 15, 2015).

I. DISCUSSION

The Netflix Submitting Individuals have already certified—most of them twice—that they do not participate in Competitive Decision-Making on behalf of any of their clients. The Objections offer no evidence to the contrary. The Programmers object to most of the Netflix Submitting Parties⁵ merely by listing them in an appendix of the Programmers’ Objections, without individualized comments. For these individuals, the Programmers simply rest on their general grievance against the Commission and its decision to permit interested parties to see their confidential materials.⁶

For the remainder of the Netflix Submitting Parties,⁷ the Programmers object on the ground that they are associated in one way or another with Steptoe & Johnson LLP, which represents DISH Network Corporation in regulatory matters before the Commission and the Copyright Office in matters that involve retransmission consent.⁸ The *Modified Joint Protective*

⁵ Susan Creighton, Victoria Jeffries, Courtney Armour, Jeff Blattner, David Evans, Howard Chang, Nicholas Giancarlo, Madeleine Chen, and Steven Joyce.

⁶ Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., MB Docket No. 14-57 (Oct. 16, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., MB Docket Nos. 14-57, 14-90 (Oct. 21, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications LLC, MB Docket No. 14-57, at 6 (Oct. 16, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications LLC, MB Docket Nos. 14-57, 14-90 (Oct. 21, 2014).

⁷ Markham Erickson, Damon Kalt, Natalia Seay, Sarah Leggin, Georgios Leris, and James Hobbs.

⁸ Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications LLC, MB Docket No. 14-57, at 2-3 (Oct. 15, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The

Orders, however, do not base access to Confidential and Highly Confidential Information on firm affiliation.⁹ Rather, the *Modified Joint Protective Orders* define Competitive Decision-Making as:

a person's activities, association, or relationship ***with any of his clients*** involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions ***of the client*** in competition with or in a business relationship with the Submitting Party or with a Third Party Interest Holder.¹⁰

Neither the Programmers' general objection to the Bureau's decision in adopting the *Modified Joint Protective Orders* nor general firm affiliation is a valid ground for objecting to an individual's acknowledgment of confidentiality. At the very least, the Programmers must show some specific factual basis for believing that each of these individuals is involved in Competitive Decision-Making on behalf of a client that is in a business relationship with them. Absent such a showing, the Programmers' Objections must fail.

Even if firm affiliation were enough, the Programmers similarly fail to provide any evidence that Mr. Michalopoulos or Ms. Roy are involved in Competitive Decision-Making on behalf of any of their clients, as defined by the *Modified Joint Protective Orders*. Providing regulatory counsel for a client does not mean—and has never meant—that an individual is involved in Competitive Decision-Making pursuant to the *Modified Joint Protective Orders*, or

Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., MB Docket No. 14-57, at 2-3 (Oct. 15, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications LLC, MB Docket No. 14-57, at 6 (Oct. 16, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., MB Docket No. 14-57, at 7 (Oct. 16, 2014).

⁹ *MJPO 14-57* ¶ 2; *MJPO 14-90* ¶ 2.

¹⁰ *MJPO 14-57* ¶ 2 (emphasis added); *MJPO 14-90* ¶ 2 (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2014, I caused true and correct copies of the foregoing to be served by electronic mail upon the following counsel of record:

Mace Rosenstein
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*Counsel for Discovery Communications LLC,
CBS Corp., Scripps Networks Interactive, Inc.,
The Walt Disney Company, Time Warner Inc.,
TV One, LLC, Twenty First Century Fox, Inc.,
Univision Communications Inc., and Viacom Inc.*

Sincerely,

_____/s/_____
Andrew W. Guhr
Steptoe & Johnson LLP