

**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 AND COMMENTS ON 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, 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. (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 the individuals 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 Notices 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 letters that accompanied the Acknowledgments) is attached hereto as **Exhibit B**.

these Acknowledgements were posted to the Commission website on or after October 31, 2014. The Content Companies object to the disclosure of HCI or VPCI produced by any party to the Submitting Individuals (and any of the Submitting Individuals' employees, as those terms are defined in Paragraph 13 of the Modified Joint Protective Order).³

I. The Content Companies Specifically Object to Disclosure of HCI and VPCI to The Submitting Individuals.

The Submitting Individuals – Christian Escobar, Nebiye Girma, and Adam S. Wehler – have sought access to HCI and VPCI as employees of outside counsel of DISH Network. They should not be permitted to access such information.

These individuals are employed by Steptoe Johnson LLP. As described in the Content Companies' prior objections, Steptoe attorneys who have filed Acknowledgments of Confidentiality in these proceedings are engaged in Competitive Decision-Making.⁴ Steptoe advises clients on distribution and retransmission consent matters.⁵ 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 retransmission matters for DISH would have no interaction on Competitive Decision-Making matters with their client.

³ Under the Modified Joint Protective Order, the Content Companies are entitled to object to the Submitting Individuals' requests for access because they are Third Party Interest Holders and have confidentiality interests in certain of the documents to which access is sought.

⁴ 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).

⁵ Steptoe Johnson LLP, 2013 Lobbying Disclosure Act Report, No. 16.

Indeed, DISH’s counsel at Steptoe itself 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.”⁶ The Content Companies share that very concern with regard to disclosure of HCI and VCPI in this proceeding.

Based on prior Commission findings, there is a significant probability that individuals seeking access to HCI and VPCI on behalf of DISH will not adequately protect the Content Companies’ VPCI, and as a consequence of a lapse in protection, risk competitive harm in the video program distribution marketplace and otherwise disserve the public interest.⁷ Several courts also have noted DISH’s negligence in handling litigation documents.⁸ These hazards are further discussed in the Content Companies’ Application for Review and Request for Stay filed

⁶ *In the Matter of Consolidated Application of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation for Authority to Transfer Control*, CS Docket No. 01-348, Ex Parte Notice, Submitted by Steptoe & Johnson LLP on behalf of EchoStar Communications Corporation (Apr. 22, 2002).

⁷ In reviewing DISH’s proposal to merge with Hughes, in which Steptoe represented DISH, the Commission noted that

the Cable Bureau admonished EchoStar for failure to timely disclose that information it was treating as confidential had been publicly disclosed, thus failing in its ‘duty of candor’ to the agency, *EchoStar Satellite Corp. v. Young Broadcasting*, 16 FCC Red 15070 (Cable Bur. 2001).

EchoStar Communications Corp., 17 FCC Rcd 20559, 20576 & n.122 (2002).

⁸ *See, e.g., VOOM HD Holdings LLC v. EchoStar Satellite L.L.C.*, 939 N.Y.S.2d 321 (1st Dep’t 2012) (affirming sanction of EchoStar for systematically destroying evidence in violation of the law and in the face of a prior federal court ruling).

on October 14, 2014. Accordingly, these individuals should not be permitted to access such information on behalf of DISH.

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 their employees on notice that they may not access such HCI or VPCI until this Objection is finally resolved.⁹

⁹ In order to preserve the status quo pending resolution of their appeal on the merits, the Content Companies have asserted a longstanding objection to permitting any individual to access their VPCI at least until Commission action on their Application for Review. The Bureau, however, has rejected the categorical objections the Content Companies have filed and has ruled that the Content Companies do not have the right to assert objections to individuals if the only basis for the objection is that no party should have access to the Content Companies' VPCI. *See In the Matter of Application of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorization, et al.*, Order, MB Docket Nos. 14-57, 14-90, DA 14-1605 (Nov. 4, 2014), ¶¶ 9, 10. In light of this ruling, which would give the individual listed on Exhibit C access to the Content Companies' VPCI as early as November 13, 2014, the Content Companies request that the individual listed on Exhibit C (and his employees) not be permitted access to the Content Companies' VPCI if any order granting that individual access to the Content Companies' VPCI is stayed, notwithstanding the Content Companies' decision not to formally object to the individual listed on Exhibit C at this time. Moreover, 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 have no objection to permitting the individual listed on Exhibit C 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.

Respectfully submitted,

**CBS CORPORATION, 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.**

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

November 5, 2014

EXHIBIT A
Submitting Individuals

1. Christian Escobar, Employee of Outside Counsel for DISH Network
2. Nebiye Girma, Employee of Outside Counsel for DISH Network
3. Adam S. Wehler, Employee of Outside Counsel 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 31, 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 executors of the enclosed Acknowledgement are employees of outside counsel for DISH who will be assisting them in organizing, filing, coding, converting, storing, and retrieving documents and data connected with this proceeding. The executors are filing their Acknowledgements 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 31th day of October, 2014.



Name: Christian Escobar

Title: Litigation Support Project Manager

Company: Steptoe & Johnson, LLP

Telephone: 602-257-7744

ATTACHMENT B

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MB Docket No. 14-57

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Executed this 31th day of October, 2014.

Nebiye Mirma

Name: Nebiye Girma

Title: Litigation Support Specialist

Company: Steptoe & Johnson

Telephone: 202-828-3693

ATTACHMENT B

Acknowledgment of Confidentiality

MB Docket No. 14-57

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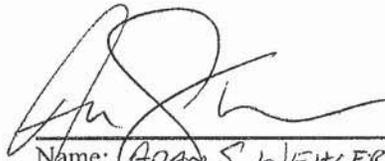
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Executed this 31th day of October, 2014.



Name: ADAM S. WEHLER
Title: SR. Project Manager
Company: Stoptoe & Johnson
Telephone: 202-327-6401

EXHIBIT C

1. Joseph G. Donahue, Outside Counsel for Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, Oxford West Telephone Company, and UniTel, Inc.

CERTIFICATE OF SERVICE

I, Mace Rosenstein, hereby certify that on this 5th day of November, 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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555 11th Street, NW, Suite 1000
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Counsel for Charter Communications, Inc.

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*Counsel for Lincolnville Networks, Inc.,
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Counsel for DISH Network

By: /s/ Mace Rosenstein
Mace Rosenstein