

**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 or Transfer Control of)	
Licenses and Authorizations)	
)	
Applications of AT&T Inc. and)	MB Docket No. 14-90
DIRECTV, For Consent to Assign or)	
Transfer Control of Licenses and Authorizations.)	

**AT&T INC.'S AND DIRECTV'S OPPOSITION TO MOTION TO STAY MEDIA
BUREAU ORDERS**

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AT&T, Inc. and DIRECTV (collectively, “Applicants”) respectfully file this Opposition to the Content Companies’ November 7, 2014, Emergency Request for Stay.

INTRODUCTION AND EXECUTIVE SUMMARY

The Content Companies seek to stay a series of Orders issued by the Media Bureau on November 4.¹ Those Orders are well-reasoned and lawful, and they strike an appropriate balance between the Content Companies’ interest in protecting their Video Programming Confidential Information (“VPCI”) and the public interest in meaningful participation. The Content Companies’ request to stay the Orders should be denied for at least three independent reasons.

First, the Content Companies have no likelihood of success on the merits of their claims. Their lead argument is that the Bureau lacked authority to issue the Order on Reconsideration on its own motion once an Application for Review was filed. That claim has no legal basis. Section 1.113(a) of the Commission’s rules explicitly states that when “any action [is] taken pursuant to delegated authority,” the “person, panel, or board taking the action may modify or set it aside on its own motion” within 30 days of the original action. That rule applies directly here, and, contrary to the Content Companies’ apparent belief, Rule 1.113(a) contains no exception for instances where an Application for Review has been filed. Nor does the Bureau’s action prevent the Commission from acting on the Application for Review. The Commission may do so at any

¹ Three of those orders are relevant to the AT&T/DIRECTV transaction proceeding. *See Applications of Comcast Corp. and Time Warner Cable Inc. and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Dkt Nos. 14-57 and 14-90, Order on Reconsideration, DA 14-1601 (MB, rel. Nov. 4, 2014) (“Order on Reconsideration”); *Applications of Comcast Corp. and Time Warner Cable Inc. and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Dkt Nos. 14-57 and 14-90, Amended Modified Joint Protective Order, DA 14-1602 (MB, rel. Nov. 4, 2014) (“Amended MJPO”); *Applications of Comcast Corp. and Time Warner Cable Inc. and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Dkt Nos. 14-57 and 14-90, Order, DA 14-1605 (MB, rel. Nov. 4, 2014) (“Order on Objections”).

time. Indeed, the Order on Reconsideration makes clear that the Applications for Review “remain pending before the Commission.”²

The Content Companies’ only other legal claim is that, any time a bureau denies an objection to an individual’s access to confidential information, that individual may not access the information until all appeals of the bureau decision are exhausted. No Commission case or order establishes such a principle, which would render irrelevant the four-part test for stays that the Commission traditionally applies.

Moreover, the Content Companies are ill-positioned to argue for such a rule. The Bureau clarified that individuals could obtain access five business days after denial of any objection to VPCI access to address the Content Companies’ abusive practice of objecting to *every* access request without any legal or factual basis for doing so. The Bureau thus responded logically to the Content Companies’ illegitimate attempt to undermine the Bureau’s decisions and to thwart the Commission’s ability to resolve these merger proceedings in a timely way. The Content Companies should not be heard to complain about the Bureau’s reasonable response to their actions.

Second, the Content Companies have not demonstrated any imminent and certain irreparable injury. The Bureau has adopted detailed procedures applicable to VPCI to avoid the very harm that the Content Companies fear: the use of that confidential information in ways that will harm them competitively. Among many other safeguards, the Bureau limited access to this material to individuals who are not involved in competitive decisionmaking and required that all individuals with access to Highly Confidential information sign a new acknowledgement as to the strict limits on use of such material. Accordingly, the Content Companies could be harmed

² Order on Reconsideration ¶ 9.

only if one assumes that individuals will not comply in good faith with the Bureau's order. There is no basis to speculate that such a violation will occur, much less that it will occur imminently.

Indeed, under the Bureau's decisions, there are only 21 individuals who are not agents of Applicants who will have access to these materials as of November 12. As discussed further below, none of those people is likely to have the imminent opportunity to use VPCI in a way that would harm the Content Companies, much less the incentive or inclination to engage in such improper conduct.

Third, a stay would impose significant harm on Applicants and consumers. The Content Companies have already stalled the Commission's timely review of the AT&T and DIRECTV transaction – causing the Bureau to stop the 180-day time clock and suspend the pleading cycle. Further delay threatens not just Applicants' ability to realize enhanced operational efficiencies and significant cost savings, but also consumers' ability to take advantage of the transaction's significant public interest benefits. Those benefits include increased competition, lower prices, improved services, and expanded broadband deployment to over 15 million households, primarily in rural areas with little or no broadband service available today.

BACKGROUND

The Bureau has made repeated efforts to accommodate the Content Companies' concerns regarding disclosure of confidential information relating to their video programming contracts. Contrary to the Content Companies' rhetoric, those efforts have resulted in a regime that contains significant – indeed, unprecedented – protections for their interests and that insulates them from competitive harm.

The Bureau first issued a Joint Protective Order in this matter on June 11, 2014. Although that Order was consistent with Commission practice, the Content Companies objected that it did not sufficiently protect the confidentiality of their highly sensitive documents. The Content Companies demanded that Commission staff examine the Highly Confidential documents *in camera* or at the Justice Department and include in the Commission record only materials they deemed relevant, redacted to ensure anonymity of the Content Companies.

After soliciting comments, the Bureau issued a modified protective order on October 7, 2014.³ Although the Bureau did not accede to the Content Companies' demands, the Modified Order added stringent new protections to prevent improper disclosure of the Content Companies' confidential information. Among other things, the Modified Order required the Applicants to segregate VPCI from other materials,⁴ restricted access to VPCI to outside counsel and consultants for the parties,⁵ barred access to anyone engaged in "competitive decision-making" involving video programming,⁶ and required persons seeking access to VPCI to acknowledge

³ See *Applications of Comcast Corp. and Time Warner Cable Inc. and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Dkt Nos. 14-57 and 14-90, Order, DA 14-1463 (MB, rel. Oct. 7, 2014) ("VPCI Order"); *Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Dkt No. 14-90, Modified Joint Protective Order, DA 14-1465 (MB, rel. Oct. 7, 2014) ("Modified Order" or "MJPO").

⁴ MJPO ¶ 10; see also VPCI Order ¶ 12.

⁵ MJPO ¶¶ 7, 13. VPCI is defined as "information that is Highly Confidential Information, and is an agreement, or any part thereof, for distribution of any video programming (including broadcast programming) carried by an Applicant's (i) MVPD service and/or (ii) OVD service; a detailed description of one or more provisions of such an agreement, including, but not limited to, price terms; and information relating to the negotiation of such an agreement." *Id.* ¶ 2 (emphasis in original).

⁶ *Id.* ¶ 2 ("Competitive Decision-Making" is defined 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.").

again in writing their obligations under the Modified Order. Those who obtain access to VPCI cannot print, copy, or transmit it,⁷ and can use it only for purposes of this proceeding.⁸

With these strict new rules in place, Applicants rapidly retooled their review procedures, undertaking extraordinary effort and expense to secure and protect VPCI. To comply with the Bureau's requirements, Applicants have devoted more than 4500 hours of work and over \$1 million to segregate VPCI within their document productions.

Despite the added protections provided by the Bureau, on October 14, 2014, the Content Companies sought full Commission review of the Modified Order. They also began objecting to every request for access to Applicants' confidential materials. In all, the Content Companies filed objections to 266 individuals.⁹

The Content Companies' unfounded, indiscriminate objections have already disrupted the Commission's review of this transaction. To date, no third party has been able to access the Highly Confidential materials produced by the Applicants. Moreover, on October 22, 2014, the Commission stopped the 180-day clock applicable to review the transaction and suspended the pleading cycle.¹⁰

On November 4, 2014, the Bureau issued its Order on Reconsideration and adopted the Amended Modified Joint Protective Orders. The Order on Reconsideration thoroughly explained why the Modified Order properly balanced the competing interests here, and why the additional restrictions sought by the Content Companies were inappropriate or unworkable.

⁷ VPCI Order ¶ 11 & n.31; MJPO ¶ 10.

⁸ MJPO ¶¶ 12, 16.

⁹ Order on Objections ¶ 4.

¹⁰ *Id.*; *Applications of Comcast Corp. and Time Warner Cable Inc. and AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Dkt Nos. 14-57 and 14-90, Order, DA 14-1523 (MB rel. Oct. 22, 2014) ("Clock Stop Order").

The Bureau also issued an order denying the Content Companies' non-specific objections to 245 individuals who sought access to VPCI in the AT&T/DIRECTV and Comcast/Time Warner Cable/Charter transactions. Of those individuals who filed Acknowledgments of Confidentiality in the AT&T/DIRECTV transaction, only 21 are not outside counsel or consultants to Applicants. As the Bureau explained, as to nearly all of the individuals involved in the two transactions (235 of 245), "the objections fail to provide any basis on which the Acknowledgements could be rejected."¹¹ Under the Bureau's Orders, individuals whose objections have been favorably resolved are entitled to access to VPCI five business days after the date of those Orders, which is November 12, 2014.¹²

On November 7, 2014, the Content Companies sought this stay.¹³

ARGUMENT

"[A] stay is not a matter of right."¹⁴ A party seeking a stay "must demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3)

¹¹ Order on Objections ¶ 1.

¹² The Content Companies assert that the Orders grant third parties access to VPCI on November 13, 2014. However, under the Order on Reconsideration, Order on Objections, and Amended Modified Joint Protective Order issued by the Bureau, access is permitted five business days from November 4, which is November 12 (taking into account the Veteran's Day holiday of November 11). *See* Order on Objections ¶ 12 ("The individuals listed in the Appendix shall have access to Confidential and Highly Confidential Information, including VPCI, five business days from the date this Order is adopted."); Amended MJPO ¶ 8 ("A person subject to an objection shall not have access to the relevant Confidential Information or Highly Confidential Information until five business days after the objection is resolved by the Bureau in favor of the person seeking access."); Order on Reconsideration ¶ 36 (stating same).

¹³ *Applications of Comcast Corp. and Time Warner Cable Inc. and AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Dkt Nos. 14-57 and 14-90, Emergency Request for Stay of Media Bureau Order and Associated Modified Protective Orders of CBS Corp., 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. (filed Nov. 7, 2014) ("Stay Request").

¹⁴ *Nken v. Holder*, 556 U.S. 418, 433 (2009).

other interested parties will not be harmed by a stay; and (4) the public interest favors a stay.”¹⁵

The party seeking the stay bears the burden of showing that the circumstances justify an exercise of the Commission’s discretion to grant such relief.¹⁶

The Commission “need not examine all four factors if [it] find[s] that a party fails to meet its burden on any one of these factors.”¹⁷ Here, the Content Companies have not shown that any, much less all, of these factors warrants a stay.

I. THE CONTENT COMPANIES HAVE NOT DEMONSTRATED A LIKELIHOOD OF SUCCESS ON THE MERITS

In an attempt to show a substantial likelihood of prevailing on the merits, the Content Companies make two arguments. Both are wrong as a matter of law.

A. The Content Companies’ lead claim is that the Bureau lacked authority to issue the Order on Reconsideration because that order “subvert[s] the Commission’s exclusive authority to rule” on their previously filed Application for Review and Request for Stay.¹⁸

The Content Companies cite no authority for this position, and it is flatly incorrect. The relevant Commission regulation, 47 C.F.R. § 1.113(a), states that, when “any action [is] taken pursuant to delegated authority,” the “person, panel, or board taking the action may modify

¹⁵ *In re North American Numbering Plan Carrier Identification Codes*, 12 FCC Rcd. 10353, 10358 (1997) (“*Administration of CICs*”); see also *In re APCC Servs., Inc.*, 22 FCC Rcd. 9080, 9081 (2007) (same); *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (same).

¹⁶ See *Administration of CICs*, 12 FCC Rcd. at 10358; see also *Nken*, 556 U.S. at 433-34; *Williams v. Phillips*, 482 F.2d 669, 670 (D.C. Cir. 1973) (party seeking a stay pending appeal has the “burden of showing that a stay is justified”).

¹⁷ *Administration of CICs*, 12 FCC Rcd. at 10358.

¹⁸ See *Applications of Comcast Corp. and Time Warner Cable Inc. and AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Dkt Nos. 14-57 and 14-90, Application for Review of CBS Corp., 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. (filed Oct. 14, 2014) (“*First Application for Review*”); Stay Request 8.

or set it aside on its own motion” within 30 days of the original action. That provision explicitly authorizes the Bureau’s action here, and it contains no exception for instances where an application for review is filed.

Nor, contrary to the Content Companies’ claim, did the Bureau’s decision somehow undermine the authority of the Commission to rule on such Applications. The Bureau’s Order on Reconsideration did not purport to rule on the Content Companies’ pending Applications, and the Commission remains free to act on them at any time. Indeed, the Order on Reconsideration itself notes that the “Content Companies’ petitions remain pending before the Commission.”¹⁹ Additionally, to the extent that the Order on Reconsideration changed the relevant requirements in ways that aggrieved the Content Companies, they are free to file an Application for Review as to those matters as well – as they now have in fact done.

B. The Content Companies’ only other legal claim is that the Bureau’s orders deviate from an alleged Commission policy of prohibiting individuals from accessing confidential information while any appeal of a decision allowing them access is pending.²⁰ No such policy exists, and the Content Companies cannot cite any case adopting or applying one. Indeed, if such a rule did exist, it would function as an *automatic* stay and thus displace the traditional four-part stay test that, as discussed above, the Commission and the courts routinely apply. Without any precedent to establish that the ordinary test does not apply here, the Content Companies are left to rely on a snippet of a Commission decision taken badly out of context.

¹⁹ Order on Reconsideration ¶ 9.

²⁰ Stay Request at 8-10.

In particular, they quote (at page 9) a sentence from a 1999 Reconsideration Order to the effect that in some circumstances “disclosure may be delayed pending the appeals process.”²¹ They fail to explain, however, that the issue there involved the specific procedures for access *under FOIA* to cost support materials relevant to streamlined tariff filings.²² The language there does not purport to create a general rule applicable outside of that specific context, and this case, of course, does not involve FOIA or the specific rules and procedures applicable under that statutory regime. To the contrary, in the underlying Policy Statement from which MCI had sought a narrow reconsideration concerning FOIA requests, the Commission expressly recognized that although “disclosure of programming contracts . . . can result in substantial competitive harm . . . , such contracts may be made available subject to the [Model Protective Order] in situations where they are relevant to the dispute at hand.”²³ The Commission’s decisions thus directly reject the blanket rule that the Content Companies claim exists.

Moreover, given their practices in this proceeding, the Content Companies are particularly ill-positioned to claim a right to prevent disclosure indefinitely. The companies have not limited their objections to individuals who they have reason to believe are competitive decisionmakers, but instead have objected to disclosure to *everyone* who has sought access, and have done so in nearly all cases without “provid[ing] any basis upon which the

²¹ *In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 20128, 20130 ¶ 4 (1999) (the “1999 Reconsideration Statement”).

²² *See id.*; *In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Petition for Reconsideration of MCI Worldcom, Inc., GC Dkt No. 96-65, at 18-20 (filed Sept. 17, 1998) (arguing in portion of petition cited by the Commission that the Commission’s “delay in FOIA review procedures” prevented access to documents).

²³ *In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, 24852 (1998).

Acknowledgements could be rejected.”²⁴ To prevent the Content Companies’ filing of these objections from tying up this proceeding indefinitely, the Bureau amended the Modified Order to “remove any doubt” that an objection does not “suspend indefinitely” a party’s “effective participation in the proceeding.”²⁵

Simply put, the Bureau adopted the rule at issue in response to the Content Companies’ filing a number of objections without, in the Bureau’s words, “any basis.” The Bureau took that action to protect the Commission’s ability to complete its merger review “in a timely manner.”²⁶ Having sought to manipulate the system in a way that forced the Bureau to act, the Content Companies should not now be heard to complain about the Bureau’s appropriate response to their gamesmanship.

II. THE CONTENT COMPANIES DO NOT FACE IMMINENT, IRREPARABLE INJURY

A party moving for a stay must demonstrate imminent irreparable injury.²⁷ It is not enough that the claimed harm might occur at some indeterminate future date. Rather, in this context, the Content Companies must prove that the harm is “certain” to occur in the near future.²⁸

The Content Companies do not come close to meeting that demanding standard. Their claim is essentially that AT&T and DIRECTV lack adequate incentive to protect their proprietary information, and that someone might violate the Bureau’s order by using the material

²⁴ Order on Objections ¶ 1.

²⁵ Order on Reconsideration ¶ 36.

²⁶ *Id.*

²⁷ *Wisconsin Gas Co. v. Federal Energy Regulatory Comm’n*, 758 F.2d 669, 674 (D.C. Cir. 1985).

²⁸ *Id.* (“The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.”).

improperly in competitive decisionmaking. AT&T and DIRECTV, however, are parties to the very agreements that the Content Companies are seeking to protect, and, as the Bureau recognized, they have “every incentive” to ensure the confidentiality of these agreements.²⁹ Indeed, as discussed above, AT&T and DIRECTV have already devoted thousands of hours and substantial resources to segregating and protecting VPCI.

The Content Companies need not rely exclusively on Applicants’ care and diligence, however. The Modified Order expressly addresses the concern that VPCI will be used by anyone involved in “competitive decision-making” relating to video programming. Anyone seeking access to VPCI must acknowledge in writing their obligations not to disclose any confidential information and to use such information only for purposes of this proceeding.³⁰ Indeed, as the Bureau noted, even if VPCI is *not* properly segregated and is viewed by someone who is not authorized to view that material, the information would still be Highly Confidential and thus could be viewed only by individuals not involved in competitive decision-making.³¹ Those people, moreover, would still be subject to a legal obligation to use the material only in relation to this proceeding.

Against the background of all these protections, the Content Companies simply have not provided any evidence that they are threatened with imminent irreparable harm. At bottom, they are necessarily claiming that one or more individuals will violate the Bureau’s orders and use VPCI outside this proceeding in a way that harms their competitive interests. Such speculation as to lack of good-faith compliance with a lawful agency order cannot establish irreparable injury

²⁹ Order on Reconsideration ¶ 31, n.115

³⁰ MJPO ¶¶ 12, 16.

³¹ Order on Reconsideration ¶ 32.

even where, unlike this case, there is evidence of past breaches.³² It is particularly inappropriate here, where the Content Companies have introduced *no* evidence that sensitive documents have slipped through such a protective order in the past resulting in competitive harm or that such a circumstance is likely to occur in the near future.³³

Moreover, as the Bureau stressed, such harm is particularly unlikely because the universe of relevant individuals here is “extremely limited.”³⁴ Beyond the Applicants’ outside counsel and consultants, only 21 people have sought access to the VPCI in the AT&T/DIRECTV proceeding. Eighteen of those people are outside attorneys, who have strict professional and ethical obligations requiring adherence to such orders and would be subject to substantial discipline if they violated the Modified Order. The three non-lawyers of the 21 include an economics professor, the research director of a public interest group, and a trade association official whose duties are limited to government affairs. None of these individuals is likely to have even the opportunity, much less the incentive, to violate the Modified Order and use VPCI in competitive decisions that harm the Content Companies.

³² See *Henke v. Dep’t of the Interior*, 842 F. Supp. 2d 54, 61-62 (D.D.C. 2012) (evidence that Park Police officers illegally destroyed confiscated property twice in the past was insufficient to establish a substantial risk that Park Police would violate regulations governing the disposition of confiscated property in the future; isolated incidents did not establish a sufficient pattern or policy to show a likelihood of future violation).

³³ Notably, out of the 245 people as to whom the Media Bureau has granted VPCI access, the Content Companies identify only one individual about whom they have a particularized concern (Mr. Andrew Gurh, a fifth year associate at Steptoe & Johnson LLP). See Stay Request 12. They do not explain why they have not sought a stay only as to Mr. Gurh’s access.

³⁴ Order on Reconsideration ¶ 26.

III. A STAY WOULD HARM APPLICANTS, CONSUMERS, AND MANY OTHERS

The Content Companies have failed to show “that third parties will not be harmed if the stay is granted, let alone demonstrate[d] an absence of such injury.”³⁵ Instead, they merely assert that their request will “not harm any party”³⁶ or “delay the Commission’s overall review.”³⁷ Those claims are demonstrably incorrect.

The Content Companies’ objections have already caused substantial delay in the Commission’s review of the transaction and have imposed enormous burdens on Applicants, by requiring additional, labor-intensive reviews of millions of pages of documents by hundreds of attorneys. In addition, the Content Companies have misused the process for reviewing Acknowledgments of Confidentiality by challenging access by anybody and everybody. These dilatory actions have already caused the Bureau to stop the review clock for 21 days and suspend the pleading cycle.³⁸ One hundred and four days remain on the clock.

A stay would extend these harms by preventing the Commission from restarting the transaction clock and resuming the pleading cycle. That would push even further back the point at which AT&T and DIRECTV will be able to consummate their merger. It would delay the time when AT&T will be able to realize significant operational synergies and cost savings and

³⁵ *In re TV Communications Network, Inc. Petition To Stay Pending Review By The Appellate Court*, Order, 27 FCC Rcd 943 ¶ 10 (WTB 2012); *In re Lockheed Martin Global Telecommunications*, 17 FCC Rcd 1552, 1557 ¶ 13 (IB 2002) (“*Lockheed Martin*”) (denying stay where the Commission was “not convinced by [the petitioner’s] bare assertion that Applicants will suffer no harm if the stay were granted” and Applicants had “expended considerable effort and resources to secure necessary approvals and have undertaken complex and costly business steps necessary to complete the transaction”).

³⁶ Stay Request 12-13.

³⁷ Content Companies Oct. 14 Stay Request 25; Stay Request 13 n. 35 (referring to this argument).

³⁸ *Applications of Comcast Corp. and Time Warner Cable Inc. and AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Dkt Nos. 14-57 and 14-90, Order, DA 14-1523 (MB rel. Oct. 22, 2014) (“Clock Stop Order”).

benefit consumers through increased competition, lower prices, improved services, and expanded broadband deployment. Every day that the transaction is delayed pushes back the time when consumers will benefit from lower prices and better products.

Finally, delays in merger transactions also raise costs and increase risks. The Commission itself has emphasized the importance of prompt disposition in mergers.³⁹ For example, as long as the transaction review is pending, there is significant uncertainty. The plans of employees, suppliers, contractors, and the parties themselves are stymied because they do not know what will happen, what services the company will market, what changes will be made, what synergies will be realized and what duplication will be eliminated.⁴⁰ The longer the Commission takes to review the transaction, the longer the parties to the Agreement and other third parties remain in limbo as to the final decision. Such limbo has long been recognized as a cost, and therefore, a source of harm to the parties involved in the transaction and to other third parties, such as employees and shareholders.⁴¹

³⁹ See, e.g., *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, MB Dkt No. 14-90 (rel. Aug. 28, 2014) (“The Commission has an obligation to review proposed transactions as expeditiously as possible, regardless of whether or not delays in the process would result in harm to a party.”); *Applications of Comcast Corp., General Electric Co. and NBC Univ., Inc. for Consent to Assign Licenses or Transfer Control of Licenses*, Order, 25 FCC Rcd 3101, 3101 (MB 201) (2010) (“The Commission has an obligation to review the proposed transaction as expeditiously as possible.”).

⁴⁰ See, e.g., *Lockheed Martin*, 17 FCC Rcd at 1556-57 ¶ 13; *Braniff Master Exec. Council of Air Line Pilots Ass’n Int’l v. C.A.B.*, 693 F.2d 220, 231 (D.C. Cir. 1982) (“*Braniff Master*”) (expeditious review and approval of a merger by the regulatory agency “facilitat[es] stability in the financial markets by lessening the period of uncertainty faced by the parties to the merger.”).

⁴¹ See, e.g., *Lockheed Martin*, 17 FCC Rcd. at 1556-57 ¶ 13; *Braniff Master*, 693 F.2d at 231.

CONCLUSION

For these reasons, Applicants respectfully request that the Commission deny the Content Companies' motion to stay the Bureau's Orders.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2014, I caused true and correct copies of the foregoing Opposition to Motion to Stay Media Bureau Orders of AT&T Inc. and DIRECTV to be served by electronic mail and by FedEx upon:

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