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March 20, 2015

By ECFS and Electronic Delivery

William T. Lake, Chief
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., Time Warner Entertainment-Advance/Newhouse Partnership, and SpinCo for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 14-57; Applications of AT&T Inc. and DIRECTV for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 14-90

Dear Mr. Lake:

We write to bring to your attention the inequity of permitting certain employees of a non-commercial trade association to view Confidential and Highly Confidential Information (“HCI”) as “Outside Counsel”, while continuing to deny such access to the American Cable Association’s Senior Vice President of Government Affairs, Ross J. Lieberman, who has sought the same access as “Outside Counsel” and in every pertinent respect is similarly situated to these employees granted this privilege. Specifically, we recently became aware that Angela Kronenberg and Mary C. Albert, employees of the Competitive Telecommunications Association (“COMPTEL”), a trade association that, like ACA, contains members who are multichannel video programming distributors (“MVPDs”), have been permitted as “Outside Counsel” to view Confidential and HCI submitted into the record in the Comcast-Time Warner Cable proceeding, while ACA’s Lieberman, who also qualifies as “Outside Counsel” and in every relevant respect is similarly situated to Ms. Kronenberg and Ms. Albert, has not yet been granted the same privilege in either the Comcast/Time Warner Cable or AT&T/DirecTV proceedings. The FCC should address this unfairness to Mr. Lieberman, his association, and his association’s members and their customers by immediately ruling against the objections of the programmers and

broadcasters (collectively, “Content Companies”) to Mr. Lieberman’s long pending request for access.

The Content Companies objected to Mr. Lieberman’s access to Confidential and HCI on the grounds that he did not qualify as “Outside Counsel” as the term is defined in the joint protective order,¹ yet they declined to raise similar objections to Ms. Kronenberg and Ms. Albert, who are similarly situated to Mr. Lieberman.² All three individuals are licensed to practice law in the District of Columbia, all three work for non-commercial trade associations, and all three have signed Acknowledgements of Confidentiality attesting to the fact that they are not involved in competitive decision-making, which includes the negotiation of video programming carriage agreements between their employer’s member companies and video programmers.

As discussed below, the arbitrariness of the Content Companies’ objections to Mr. Lieberman and lack of objection on similar grounds to others who are similarly situated undermines the Content Companies’ reasoning for why Mr. Lieberman should be denied access to confidential and HCI. The Content Companies failed to show cause to why Mr. Lieberman should be denied access to confidential and HCI in their initial objections, or why Mr. Lieberman’s status as Outside Counsel under the definitions contained in Commission’s protective orders in previous merger reviews should not be dispositive here. For these reasons, Mr. Lieberman too should immediately be granted access to Confidential and HCI that has been produced into the record in both pending merger reviews.

On January 16, 2015, Angela Kronenberg, Chief Advocate and General Counsel for COMPTTEL, filed an Acknowledgement of Confidentiality seeking access to Confidential Information and HCI (which includes VPCI).³ Like Mr. Lieberman, Ms. Kronenberg is a licensed

¹ On October 14, Tribune Media Company, Raycom Media, Inc., Gray Television, Inc., Gannett Co, Inc., and Graham Media Group objected to Mr. Lieberman’s having access to HCI and VPCI in the above-captioned proceeding. *See, Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, Objection, <http://apps.fcc.gov/ecfs/document/view?id=60000973369>, at p. 1. On October 15, 2014, CBS Corporation, Discovery Communications LLC, 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. objected to Mr. Lieberman’s having access to HCI and VPCI in the above-captioned proceeding. *See Objection To Request For Access To Highly Confidential Information And Video Programming Confidential Information*, <http://apps.fcc.gov/ecfs/document/view?id=60000973461>, at p. 3.

² We recognize that the clearances afforded the COMPTTEL employees pertain only to the Comcast/Time Warner Cable proceeding, however, ACA lodges this objection based on their access with respect to the denial of Mr. Lieberman’s access to Confidential and HCI in both merger reviews because the identical protective order is used in each and identical grounds for objecting to Mr. Lieberman’s access to the information have been lodged in each proceeding.

attorney⁴ who is actively engaged in her capacity as Outside Counsel of Record in the conduct of the Comcast/TWC merger review proceeding on behalf of COMPTTEL.⁵ She has certified that she is not involved in Competitive Decision-Making as that term has been defined by the Commission.⁶ COMPTTEL is a non-profit trade association⁷ representing commercial parties,⁸ including MVPDs,⁹ which are participating in this proceeding.¹⁰ Like ACA, COMPTTEL is a non-commercial party in this proceeding.

Despite being similarly situated to Mr. Lieberman in all relevant ways,¹¹ no party, including the Content Companies, filed an objection to Ms. Kronenberg's Acknowledgement. As outlined in ACA's Opposition,¹² the Content Companies' objection, that Mr. Lieberman "does not qualify as Outside Counsel or as an Outside Consultant"¹³ must be rejected because he falls squarely within the definition of "Outside Counsel of Record" or "Outside Counsel" that is contained in each protective order released in this proceeding. Given the Content Companies'

³ See, Letter from Angela Kronenberg to Marlene H. Dortch dated January 16, 2015 in MB Docket No. 14-57; <http://apps.fcc.gov/ecfs/document/view?id=60001014058>.

⁴ <https://www.dcbbar.org/membership/find-a-member-results.cfm> (Angela M. Kronenberg, whose membership status in the D.C. Bar is listed as "active," has been admitted since January 6, 1997.)

⁵ See, Letter from Angela Kronenberg to Marlene H. Dortch dated January 16, 2015 in MB Docket No. 14-57; <http://apps.fcc.gov/ecfs/document/view?id=60001014058>.

⁶ Id.

⁷ See, Return of Organization Exempt from Tax, IRS Form 990, filed by COMPTTEL, at http://990s.foundationcenter.org/990_pdf_archive/521/521293594/521293594_201312_990O.pdf?_ga=1.233045723.419560938.1424134660.

⁸ See, Member List of COMPTTEL, at <http://www.comptel.org/memberlist.asp?contentid=2109>.

⁹ Id. COMPTTEL's membership includes Google Fiber, TDS, Wide Open West (WOW!)

¹⁰ See, Petition to Deny, filed by Comptel in MB Docket No. 14-57 (Aug. 25, 2014); <http://apps.fcc.gov/ecfs/document/view?id=7521817472>.

¹¹ See, Opposition to Objections to Disclosure of Confidential and Highly Confidential Information, filed by ACA in MB Docket No. 14-57 (Oct. 22, 2014) at pp. 10-11; <http://americancable.org/files/141022%20ACA%20Comcast%20-%20TWC%20Opposition%20to%20Objections.pdf> ("Opposition").

¹² Id.

¹³ See, Content Companies' Objection, *supra* at p. 3; <http://apps.fcc.gov/ecfs/document/view?id=60000973461>.

acquiescence to Ms. Kronenberg viewing Confidential and HCI as an “Outside Counsel,” the Content Companies’ objection to Mr. Lieberman must be viewed as arbitrary. The lack of consistency in their position alone serves as an adequate basis for the Media Bureau to reject the Objections to Mr. Lieberman.

This is not the first time that the Content Companies’ treated Mr. Lieberman differently than another similarly situated attorney who sought access to Confidential and HCI as an “Outside Counsel.” On October 21, 2014, Mary Albert, Assistant General Counsel for COMPTEL, filed an Acknowledgement of Confidentiality.¹⁴ Ms. Albert is a licensed attorney,¹⁵ actively engaged in her capacity as Outside Counsel of Record in the conduct of the Comcast/TWC merger review proceeding on behalf of COMPTEL. She has certified that she is not involved in Competitive Decision-Making as that term has been defined by the Commission.¹⁶ In all relevant respects, she is similarly situated to Mr. Lieberman.

On October 24, the Content Companies (except for TV One) filed an objection to Ms. Albert reviewing Confidential and HCI under the modified joint protective order.¹⁷ Unlike objections filed against Mr. Lieberman asserting that he “does not qualify as Outside Counsel,” the Content Companies raise no specific objection to Ms. Albert’s access. They simply argue that information they have a confidentiality interest in should not be made available in this proceeding. The Media Bureau properly rejected that argument, providing Ms. Albert access that has been denied to Mr. Lieberman.

¹⁴ See, <http://apps.fcc.gov/ecfs/document/view?id=60000974914> (“Albert Acknowledgement”).

¹⁵ See, DC Bar Membership Directory at, <https://www.dcb.org/membership/find-a-member-results.cfm> (Mary C. Albert, whose membership status in the D.C. Bar is listed as “active,” has been admitted since June 19, 1981.)

¹⁶ See, Albert Acknowledgement, *supra*.

¹⁷ See, Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, filed by 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. in MB Docket No. 14-57 (Oct. 24, 2014); <http://apps.fcc.gov/ecfs/document/view?id=60000975809>.

With the Commission's review of the Comcast/TWC transaction having reached day 165 of the 180-day time clock,¹⁸ ACA has been and continues to be significantly and unfairly prejudiced by Mr. Lieberman not having access to Confidential Information and HCI.¹⁹ For example, on January 30, the Commission convened a workshop to discuss certain economic issues presented by the transactions, which Mr. Lieberman was prohibited from attending.²⁰ More recently, on February 20, 2015, Comcast's outside consultants, Drs. Gregory Rosston and Michael Topper and Cornerstone Research prepared a lengthy note regarding the Commission's vertical foreclosure and bargaining model, speaking directly to the ACA's core concern with the pending transaction, that contained confidential and HCI that is unavailable to Mr. Lieberman.²¹ With each passing day, as ACA's other counsel and economic expert continue to review new confidential and HCI entered into the record, and develop their thinking on this merger, Mr. Lieberman's limited participation puts ACA and its members at a significant and unfair disadvantage, and as a matter of fairness, the Commission must promptly rectify this matter.

ACA recognizes that the issue of whether third parties will be permitted to view Video Programming Confidential Information ("VPCI") is the object of the Content Companies' pending challenge at the U.S. Court of Appeals for the District of Columbia Circuit. However, the pendency of this case need not prevent the Media Bureau from promptly ruling on the objections to Mr. Lieberman's ability to view other Confidential and HCI. Allowing Mr. Lieberman access to information marked as either Confidential or HCI now will not harm the Content Companies. The Content Companies' appeal to the courts about how VPCI should be treated will not be prejudiced by the relief requested because, like everyone else, Mr. Lieberman's access to disputed VPCI will not be decided until the Content Companies' appeal is resolved.

¹⁸ See, the FCC's Comcast-Time Warner Cable transaction timeline at, <http://www.fcc.gov/transaction/comcast-twc>. We note that the clock is now stopped, pursuant to Public Notice, DA 15-327 (Mar. 13, 2015); http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0313/DA-15-327A1.pdf.

¹⁹ As ACA's Senior Vice President of Government Affairs and principal advocate in the above-captioned proceeding, Mr. Lieberman possesses critical knowledge, expertise, and institutional memory, which is unique to the association and essential to its advocacy before the FCC.

²⁰ Both Ms. Kronenberg and Ms. Albert attended the economist roundtable. See, Letter from William Lake, Chief, Media Bureau to Marlene H. Dortch dated February 4, 2015 in MB Docket No. 14-57; <http://apps.fcc.gov/ecfs/document/view?id=60001026191>.

²¹ See, Letter from Michael D. Hurwitz to Marlene H. Dortch dated February 20, 2015 in MB Docket No. 14-57; <http://apps.fcc.gov/ecfs/document/view?id=60001032051>.

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For these reasons, ACA respectfully requests the Commission to deny the Content Companies' objection and promptly rule that Mr. Lieberman, as counsel for a noncommercial participant in this proceeding, is eligible to access all information marked Confidential or HCI that is authorized for release in the above-captioned proceeding.

Respectfully submitted,



David LaFuria
Counsel for the American Cable Association

cc: James Bird
Joel Rabinovitz
Neil Dellar
Hillary Burchuk
Jamillia Ferris
Elizabeth Andrion
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