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Via Electronic Filing

March 25, 2015

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

Re: MB Docket No. 14-57, *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. 14-90, *Applications of AT&T Inc. and DIRECTV for Consent to Transfer Control of Licenses and Authorizations*

Dear Mr. Lake:

I write in response to the March 20, 2015 letter submitted in the referenced dockets by counsel for the American Cable Association (the “Letter”).¹ The Letter asks the Media Bureau (the “Bureau”) to “immediately rule[] against” objections submitted by 14 entities contending that Ross Lieberman should not be granted access to Highly Confidential Information (“HCI”) under the terms of the Second Amended Modified Joint Protective Orders entered in these proceedings.

The Second Amended Modified Joint Protective Orders prohibit any individual from requesting access to HCI or Video Programming Confidential Information (“VPCI”) unless that individual is an “Outside Counsel” or an “Outside Consultant.”² Five separate objections have been raised to Mr. Lieberman’s request to access HCI and VPCI on the basis that he is not an “Outside Counsel” under the terms of the Protective Orders. Tribune Media Company, Raycom Media, Inc., Gray Television, Inc., Gannett Co., Inc., and Graham Media Group jointly filed

¹ Letter from David LaFuria, Counsel for the American Cable Association, to William T. Lake, Chief, Media Bureau, MB Docket Nos. 14-57, 14-90 (Mar. 20, 2015).

² Second Amended Modified Joint Protective Orders, ¶ 7.

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objections on October 14, 2014.³ 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. jointly filed an objection on October 14, 2014.⁴ CBS Corporation, 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”) jointly filed an objection on October 23, 2014.⁵ Discovery Communications LLC filed an objection on October 23, 2014.⁶ The American Cable Association opposed these objections on October 22, 2014 and October 27, 2014.⁷

The Bureau twice has had the opportunity to grant Mr. Lieberman access to HCI, but to date has refused to do so. On November 4, 2014, in an order considering whether ten employees of The Greenlining Institute, Free Press, the California Public Utility Commission, and the Maine Office of Public Advocate qualified as “Outside Counsel” or “Outside Consultants,”⁸ the Bureau expressly declined to consider whether Mr. Lieberman qualified as “Outside Counsel,” noting that his “circumstances differ” from the counsel the Bureau concluded were entitled to access HCI.⁹ On December 3, 2014, the Bureau elected to give certain individuals—including

³ Applications of Comcast Corporation and Time Warner Cable Inc., Charter Communications Inc. and SpinCo. for Consent to Assign or Transfer Control of Licenses and Authorizations, Tribune Media Company, et al., Objection, MB Docket No. 14-57 (filed Oct. 14, 2014); Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, Tribune Media Company, et al., Objection to Disclosure of Confidential and Highly Confidential Information, MB Docket No. 14-90 (filed Oct. 14, 2014).

⁴ Applications of Comcast Corporation and Time Warner Cable Inc., Charter Communications Inc. and SpinCo., CBS Corp., et al., Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, MB Docket No. 14-57 (filed Oct. 14, 2014).

⁵ Applications of Comcast Corporation and Time Warner Cable Inc., Charter Communications Inc. and SpinCo., CBS Corp., et al., Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, MB Docket No. 14-90 (filed Oct. 23, 2014).

⁶ Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, Discovery Communications LLC, Objection to Disclosure of Confidential and Highly Confidential Information, MB Docket No. 14-90 (filed Oct. 23, 2014).

⁷ Applications of Comcast Corporation and Time Warner Cable Inc., Charter Communications Inc. and SpinCo., CBS Corp., et al., Opposition to Objections to Disclosure of Confidential and Highly Confidential Information, MB Docket No. 14-57 (filed Oct. 22, 2014).

⁸ Order, DA 14-1605, MB Docket Nos. 14-57, 14-90 (Nov. 4, 2014), ¶¶ 10-11.

⁹ Order, DA 14-1605, MB Docket Nos. 14-57, 14-90 (Nov. 4, 2014), at n.19.

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representatives of the American Cable Association—access to HCI.¹⁰ Again, the Bureau expressly declined to consider whether Mr. Lieberman was entitled to access HCI.¹¹

In urging the Bureau to rule on Mr. Lieberman’s status as an “Outside Counsel” now, the Letter criticizes the Content Companies for their allegedly “arbitrary” objection to Mr. Lieberman’s request to access HCI and VPCI.¹² According to the Letter, the Content Companies have shown a “lack of consistency in their position” by objecting to Mr. Lieberman but not asserting a similar objection to a request to access HCI and VPCI submitted by Angie Kronenberg, the Chief Advocate and General Counsel for COMPTEL.¹³

There is nothing arbitrary about the Content Companies’ objections. At the present time, there is no need for the Content Companies to object to Ms. Kronenberg’s request to access VPCI—or any other individuals’ requests to access VPCI—because the U.S. Court of Appeals for the D.C. Circuit has granted the Content Companies’ request to stay the Commission’s decision to give any third parties access to VPCI.¹⁴ Ms. Kronenberg’s request to access VPCI was not filed until January 16, 2015—almost two months after the Court issued its stay.¹⁵ As the Bureau itself has noted, “[u]ntil the stay is lifted,” objections to requests to access “VPCI are not ripe.”¹⁶ If the Court-ordered stay is lifted, the Content Companies expressly reserve the right to assert appropriate objections to any request to access VPCI filed while the stay was in place.

The Letter asserts that the American Cable Association “has been and continues to be significantly and unfairly prejudiced by Mr. Lieberman not having access to Confidential Information and HCI.”¹⁷ To date, the Bureau has given nine representatives of the American Cable Association—four “Outside Consultants”¹⁸ and five “Outside Counsel”¹⁹—access to HCI. As even the American Cable Association admits, these individuals have been able “to review new

¹⁰ Order, DA 14-1740, MB Docket Nos. 14-57, 14-90 (Dec. 3, 2014), ¶¶ 3-4.

¹¹ Order, DA 14-1740, MB Docket Nos. 14-57, 14-90 (Dec. 3, 2014), at nn 9, 13.

¹² Letter, at 4.

¹³ Letter, at 4.

¹⁴ *CBS Corp. v. Federal Communications Commission*, No. 14-1242 (Nov. 21, 2014).

¹⁵ Letter from Angie Kronenberg to Marlene H. Dortch, Secretary, MB Docket No. 14-57 (Jan. 16, 2015).

¹⁶ Order, DA 14-1740, MB Docket Nos. 14-57, 14-90 (Dec. 3, 2014), ¶ 3-4.

¹⁷ Letter, at 5.

¹⁸ Order, DA 14-1605, MB Docket Nos. 14-57, 14-90 (Nov. 4, 2014), App’x.

¹⁹ Order, DA 14-1605, MB Docket Nos. 14-57, 14-90 (Nov. 4, 2014), App’x; Order, DA 14-1740, MB Docket Nos. 14-57, 14-90 (Dec. 3, 2014), at nn 9, 13.

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confidential and HCI entered into the record, and develop their thinking on this merger.”²⁰ The American Cable Association is thus in the same position as numerous other participants in these proceedings (including the transaction parties and the Writers’ Guild of America)—its in-house attorneys may not access HCI, but its Outside Counsel and Outside Consultants may do so.

Sincerely,

/s/ Mace Rosenstein

Mace Rosenstein

*Counsel for CBS Corporation,
Scripps Networks Interactive,
Inc., The Walt Disney
Company, Time Warner Inc.,
Twenty First Century Fox,
Inc., Univision
Communications Inc., and
Viacom Inc.*

²⁰ Letter, at 5.