

Time Warner Inc.
800 Connecticut Ave., N.W.
Washington, DC 20006

Comcast Corporation
2001 Pennsylvania Ave., N.W.
Washington, DC 20006

January 26, 2006

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: MB Docket 05-192

Dear Ms. Dortch:

Comcast Corporation (“Comcast”) and Time Warner Inc. (“Time Warner”) (collectively, the “Submitting Parties” or “Companies”) hereby respond to DIRECTV Inc.’s (“DIRECTV”) January 24, 2006 letter¹ concerning its request for electronic copies of certain confidential and highly confidential documents (the “Confidential Information”) submitted to the FCC in response to the agency’s December 5, 2005 “Information and Document Request.”²

As the Submitting Parties repeatedly have explained, the materials at issue contain some of their most sensitive commercial data.³ DIRECTV itself does not deny that the data at issue is highly sensitive and proprietary. And the Media Bureau also has recognized the highly sensitive nature of this information. That is precisely why it afforded the Companies *full* discretion to designate “Confidential” or “Highly Confidential” documents submitted in this proceeding as “Copying Prohibited.”⁴ Any logistical inconvenience that DIRECTV’s economists may experience by

¹ See Letter from William M. Wiltshire and Michael Nilsson, counsel for DIRECTV, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket 05-192 (filed Jan. 24, 2006) (“DIRECTV January 24 Letter”).

² See, e.g., “Information and Document Request,” attached to letter from Donna C. Gregg, Chief, Media Bureau, to Steven N. Teplitz and Susan A. Mort, Time Warner Inc., MB Docket 05-192 (Dec. 5, 2005).

³ See Letter from James R. Coltharp, Comcast Corporation, and Steven N. Teplitz, Time Warner Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket 05-192 (filed Jan. 12, 2006) (“January 12 Letter”); Letter from James R. Coltharp, Comcast Corporation, and Steven N. Teplitz, Time Warner Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket 05-192 (filed Jan. 19, 2006) (“January 19 Letter”).

⁴ See Order Adopting Protective Order, MB Docket 05-192, DA 05-1673, ¶ 6 (rel. June 16, 2005) (“First Protective Order”); Order, MB Docket 05-192, DA 05-3226, ¶ 7 (rel. Dec. 21, 2005) (“Second Protective Order”). The Commission’s actions in this regard are consistent with congressional policy. Notably, pursuant to the procedures established under the Hart-Scott-Rodino Act, there is *no* mechanism for the public to review the documents produced by private companies to the Department of Justice or Federal Trade Commission in connection with merger reviews. Only agency officials or members of Congress may review documents produced under these circumstances. 15 U.S.C. §18a(h). These procedures, which were adopted by Congress in anticipation of the

traveling to Washington, DC to conduct their analysis must cede to the Submitting Parties' core right to safeguard the confidentiality of these materials, which otherwise are maintained in the strictest of confidence.⁵

Despite the Submitting Parties' very legitimate concerns, they have made clear that DIRECTV's economists will be given appropriate access to this Confidential Information to perform their desired evaluation. In particular, the Submitting Parties have made several significant compromises in an effort to cooperate with DIRECTV's economic consultants, including:

- Providing machine-readable spreadsheets containing Confidential Information for their on-site review and analysis;
- Allowing simultaneous review and analysis of all Confidential Information at a single location;
- Ensuring availability of adequate computer capacity to load and run their software for purposes of such economic analysis;
- Assisting in obtaining any off-site software licenses that may be required; and
- Working cooperatively to achieve a satisfactory solution to any similar logistical matters.⁶

The Submitting Parties believe that providing access to the materials under the circumstances outlined above will meet DIRECTV's objectives while ensuring that the confidential and proprietary data is protected. By contrast, allowing DIRECTV to have an electronic copy of the Confidential Information at issue obviously would decimate the "Copying Prohibited" protection afforded to the parties by the Commission.

DIRECTV, however, argues that the Submitting Parties should be held to the same restriction on designating documents as "Copying Prohibited" as DIRECTV itself was subject to in its 2003 merger with News Corporation.⁷ This comparison is misleading. As graphically demonstrated

production of highly sensitive and proprietary data by private entities to the government, reflect the policy of the United States to enable parties to protect sensitive business data. By allowing the Submitting Parties wide latitude to mark data as Copying Prohibited, the Commission's Protective Orders advance this overarching U.S. policy goal.

⁵ The Submitting Parties urge the Commission not to lose sight of the fact that it is *DIRECTV* that seeks this competitive data for its economists. The Submitting Parties compete fiercely every day in the marketplace with DIRECTV. By granting DIRECTV's request, its economists would have copies of the Submitting Parties' most sensitive competitive data. These same economists are free to work for DIRECTV in a variety of contexts outside of this merger, including, for example, in establishing DIRECTV's pricing policies, competitive strategies, and program acquisition decisions, all of which are used to compete directly with the Submitting Parties.

⁶ See January 19 Letter at 2-3; January 12 Letter at 1-3, 5-6.

⁷ See DIRECTV January 17 Letter at 4.

on the chart submitted as Attachment A hereto, the electronic copies that DIRECTV seeks in this proceeding contain far more extensive and sensitive data than those that DIRECTV was required to provide pursuant to the Second Protective Order in *News Corp./DIRECTV*. Specifically, in that proceeding, DIRECTV was only restricted from designating as “Copying Prohibited” a relatively narrow set of “subscriber data.”⁸ In contrast, here DIRECTV seeks electronic copies of spreadsheets containing highly detailed information concerning the subscribership to and revenues of the Submitting Parties’ Regional Sports Networks (“RSNs”) as well as detailed information concerning the MVPDs that carry each of these RSNs. DIRECTV also seeks machine-readable copies of spreadsheets containing some of the Submitting Parties’ most granular and sensitive revenue data. Specifically, they would like a copy of data revealing the Companies’ average revenue per subscriber, gross margin per subscriber, and operating margin per subscriber. In addition, DIRECTV is requesting electronic versions of spreadsheets containing very detailed data concerning the Companies’ individual advanced services and bundled service packages.⁹ DIRECTV itself was not required to provide copies of any of this highly sensitive data to competitors in connection with its merger with News Corporation.¹⁰

In short, the Commission has made a judgment that the Submitting Parties should have the discretion to prohibit their competitors (and their consultants) from making copies of the Companies’ most sensitive competitive data.¹¹ On top of that, the Submitting Parties have made numerous—and generous—compromises to accommodate DIRECTV’s concerns. Yet, DIRECTV continues to cling—as it has from the beginning—to the proposition that the convenience of its economists outweighs the Submitting Parties’ legitimate right to safeguard their highly sensitive commercial data. The notion that DIRECTV’s economists should not only be given access to the Submitting Parties’ sensitive competitive data, but also should be provided with electronic copies for manipulation at a location completely outside the ability of the Submitting Parties to monitor such use is unreasonable. It is all the more unreasonable in light of the fact that the Submitting Parties have been more than accommodating to the reasonable use of competitively sensitive commercial data to facilitate DIRECTV’s participation in this proceeding.

⁸ See *News Corp., General Motors Corp., and Hughes Electronics, Order Concerning Second Protective Order*, 18 FCC Rcd 15198, 15199 (¶ 2) (2003) (defining “subscriber data” as “information concerning subscribers on a zip code and designated market are basis, or on a similar basis, stored or recorded in electronic format”).

⁹ Indeed, every competitor of the Submitting Parties, including providers of high-speed Internet service, telephony, and video services, could benefit from the information that has been submitted if it unintentionally becomes available to them.

¹⁰ Moreover, despite DIRECTV’s attempt to suggest otherwise, neither Comcast nor Time Warner were participants in the *News Corp./DIRECTV* proceeding and did not have access to any of the confidential information submitted to the FCC by either News Corp. or DIRECTV. See DIRECTV January 17 Letter at 4, n.13.

¹¹ The distinction DIRECTV seeks to draw between Confidential Information submitted pursuant to the First versus the Second Protective Orders in this proceeding misses the mark. See DIRECTV January 24 Letter at n. 2. The point is not whether the electronic copies of Confidential Information sought by DIRECTV are “confidential” or “highly confidential,” but rather that neither Protective Order places any restrictions on the discretion of the Submitting Parties to mark Confidential Information as “Copying Prohibited.”

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For all of the foregoing reasons, as well as the reasons stated in the Submitting Parties' January 12 and January 19 letters, DIRECTV's request for relief should be denied.

Respectfully submitted,

Comcast Corporation

By: /s/ James R. Coltharp
James R. Coltharp
Comcast Corporation

Time Warner Inc.

By: /s/ Steven N. Teplitz
Steven N. Teplitz
Time Warner Inc.

cc: Donna Gregg
Royce Sherlock
Sarah Whitesell
Julie Salovaara
William Johnson
Tracy Waldon
Marcia Glauberman
Wayne McKee
Jim Bird
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ATTACHMENT A

Comparison of electronic copies of confidential information DIRECTV was required to make available to interested parties in News Corp./DIRECTV merger vs. electronic copies now sought by DIRECTV from Comcast and Time Warner

<p align="center">Electronic Copies of Information Required To Be Made Available By DIRECTV Under News Corp./DIRECTV Second Protective Order</p>	<p align="center">Electronic Copies Of Information Sought By DIRECTV From Time Warner And Comcast</p>
<ol style="list-style-type: none"> 1. "Total subscribers" by DMA; "Overall subscribers" by zip code 2. "Number of subscribers" by DMA for each programming package and a la carte offering, including the number of subscribers for local channels 3. Subscriber churn rate data and number of subscribers lost broken down by the competitor to whom the subscriber was lost (i.e., gross monthly subscriber gains and losses).¹ 	<ol style="list-style-type: none"> 1. Basic subscriber totals by system/division and DMA 2. Basic subscriber average monthly churn data by system/division 3. Expanded basic subscriber totals by system/division 4. Expanded basic average monthly churn data by system/division 5. Digital cable subscriber totals by system/division 6. Digital cable average monthly churn data by system/division 7. High-speed Internet Access subscriber totals by system/division 8. High-speed Internet Access average monthly churn data by system/division 9. Telephony subscriber totals by system/division 10. Telephony average monthly churn data by system/division 11. "Double Play" (video and high-speed data) average monthly churn data by system/division 12. "Triple Play" (video/data/phone) average monthly churn data by system/division

¹ It is unclear whether this "churn rate data" falls within scope of "subscriber data," defined in News Corp./DIRECTV Second Protective Order as "information concerning subscribers on a zip code and designated market area basis...." In any event, publicly available documents relating to this proceeding indicate that only "gross" churn data was requested, not broken down by any programming service levels offered by DIRECTV.

13. Basic Cable

- a) average revenue per subscriber
- b) gross margin per subscriber
- c) operating margin per subscriber

14. Expanded Basic Cable

- a) average revenue per subscriber
- b) gross margin per subscriber
- c) operating margin per subscriber

15. Digital Cable

- a) average revenue per subscriber
- b) gross margin per subscriber
- c) operating margin per subscriber

16. Residential High-Speed Internet Access

- a) average revenue per subscriber
- b) gross margin per subscriber
- c) operating margin per subscriber

17. Telephony

- a) average revenue per subscriber
- b) gross margin per subscriber
- c) operating margin per subscriber

18. “Double Play”

- a) average revenue per subscriber
- b) gross margin per subscriber
- c) operating margin per subscriber

19. “Triple Play”

- a) average revenue per subscriber
- b) gross margin per subscriber
- c) operating margin per subscriber

20. Affiliated RSNs

(all data broken down by each MVPD receiving the RSN)

- a) total subscribers by quarter
- b) subscription fee revenue
- c) other revenue
- d) advertising minutes per quarter
- e) launch fees paid to each MVPD
- f) marketing support to each MVPD
- g) other payments to each MVPD