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Before the
Federal Communications Commission
Washington, D.C. 20554

NOV 12 2008
FCC MEDIA BUREAU

Applications of)	
)	
Time Warner Inc.,)	MB Docket No. 08-120
)	
And)	WC Docket No. 08-157
)	
Time Warner Cable, Inc.)	
)	
For Approval to Transfer Control)	

PROTECTIVE ORDER

Adopted: November 10, 2008

Released: November 10, 2008

By the Chief, Media Bureau:

1. Time Warner Inc. ("Time Warner"), Time Warner Cable Inc. ("Time Warner Cable") and subsidiaries of Time Warner Cable (together with Time Warner and Time Warner Cable, the "Applicants") have filed applications seeking Commission approval for the transfer of control of Time Warner Cable from Time Warner to Time Warner's shareholders.¹ In connection with the Commission's review of the applications, the Media Bureau has sought further information from the Applicants, including copies of certain programming contracts and associated agreements ("Initial Information Request"). On October 30, 2008, the Applicants stated that these documents contain some of their most sensitive business data, the release of which would place the Applicants at a significant competitive disadvantage.² The Applicants state that program carriage contracts are among their most sensitive documents: the documents contain information about how they conduct their businesses and are highly proprietary and maintained in the strictest confidence. The Applicants state that even inadvertent disclosure of this information would harm them and place them at a significant competitive disadvantage. And the Applicants note that the Commission has consistently recognized that disclosure of programming contracts can result in substantial competitive harm to the information provider.

¹ *Time Warner Seeks FCC Consent to Assign or Transfer Control of Licenses and Authorizations in Connection With Time Warner Cable Separation*, MB Docket 08-120, Public Notice, DA 08-1574 (MB rel. July 1, 2008); *Domestic Section 214 Application Filed for the Transfer of Control of Time Warner Cable Inc. from Time Warner Inc.*, WC Docket 08-157, Public Notice, DA 08-1975 (WCB rel. Aug. 26, 2008); *Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing*, WTB Report 4330 (WTB rel. Aug. 27, 2008); *Streamlined International Applications Accepted for Filing*, Report No. TEL-01292S (IB rel. July 25, 2008) (initial International Bureau public notice); *Streamlined International Applications Accepted For Filing*, Report No. TEL-01296S, (IB rel. Aug 8, 2008) (subsequent International Bureau public notice removing application from streamlined processing).

² Letter from Michael H. Hammer, Counsel for Time Warner Inc., and Arthur H. Harding, Counsel for Time Warner Cable Inc., to Monica Desai, Chief, Media Bureau, Federal Communications Commission (Oct. 30, 2008).

2. In general, the Commission will grant more limited access to those materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace.³ Accordingly, we will permit persons submitting such documents and information and those of a similarly competitively sensitive nature (a "Submitting Party") to designate those materials as Highly Confidential and, as provided below, we will limit access to such materials to Outside Counsel of Record, their employees, and Outside Consultants and experts whom they retain to assist them in this proceeding. We find that such materials are necessary to develop a more complete record on which to base the Commission's decision in this proceeding and therefore require their production. We are mindful of their highly sensitive nature, but we must also protect the right of the public to participate in this proceeding in a meaningful way. We conclude that the protections adopted in this Protective Order will give appropriate access to the public while protecting the Applicants' competitively sensitive information, and will thereby serve the public interest. This Protective Order covers only those portions of documents or data that contain Highly Confidential Information and are responsive to the documents described in paragraph 5 below.

3. *Acknowledgement.* Any party seeking access to confidential documents subject to this Protective Order shall request access pursuant to the terms of this Protective Order and must sign the Acknowledgement of Confidentiality, attached as Appendix A ("Acknowledgement").

4. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

"Stamped Highly Confidential Document" means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN MB DOCKET NO. 08-120 and WC DOCKET NO. 08-157 before the Federal Communications Commission," unless the Commission determines, *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term "Document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies and represents that it contains information that the Submitting Party believes should be subject to protection under FOIA, the Commission's implementing rules and this Protective Order.

"Highly Confidential Information" means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources and that the Submitting Party has kept strictly confidential. Specifically, the responses requested by the Initial Information Request in MB Docket No. 08-120 and WC Docket No. 08-157 covered by this Protective Order are those portions of documents or data – or entire documents, if eligible in their entirety – that disclose one or more of the categories of highly competitively sensitive information covered by this Protective Order. To the extent that a Submitting Party believes that future submissions fall into one of these categories, the Submitting Party must file a letter explaining which category the information falls within, and the Submitting Party may file under this Protective Order only those documents specifically authorized by the Bureau.

³ See, e.g., *Adelphia Communications Corp., Time Warner Cable Inc. and Comcast Corp., Applications for Consent to the Assignment and/or Transfer of Control*, MB Docket No. 05-192, Order, DA 05-3226 (rel. Dec. 21, 2005) (adopting a second protective order); *News Corporation, General Motors Corporation, and Hughes Electronic Corporation*, MB Docket No. 03-124, Order, DA 03-2376 (rel. July 22, 2003) (adopting a second protective order).

“Outside Counsel of Record” or “Outside Counsel” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel’s activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions, including, but not limited to, representation in program carriage negotiations. Outside Counsel of Record includes any attorney representing a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party nor the analysis underlying the business decisions, including, but not limited to, representation in program carriage negotiations.

“Outside Consultants” means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, *i.e.*, Outside Consultants’ activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions, including, but not limited to, representation in program carriage negotiations. Outside Consultants include any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party nor the analysis underlying the business decisions, including, but not limited to, representation in program carriage negotiations.

“Reviewing Party” means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to the terms of this Protective Order.

5. *Categories of Highly Confidential Information Covered by This Protective Order.* A document or a portion of a document may be submitted under this Protective Order only if it is responsive to one of the particular requests covered by this Order *and* it contains Highly Confidential Information as defined above. With regard to the Applicants’ request for Highly Confidential treatment, this Protective Order covers the following documents and information: program carriage contracts, including any amendments thereto.

6. *Submission of Stamped Highly Confidential Documents.* Two copies of each Stamped Highly Confidential Document must be delivered in person to Elvis Stumbergs, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The documents shall be accompanied by a cover letter stating “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN MB DOCKET NO. 08-120 and WC DOCKET NO. 08-157 before the Federal Communications Commission.” Each page of the Highly Confidential Filing shall be stamped with this legend as well. In addition, a Submitting Party shall file with the Secretary’s Office one copy of the Stamped Highly Confidential Document and two copies of the Stamped Highly Confidential Document in redacted form, *i.e.*, containing no Confidential Information (the “Redacted Highly Confidential Document”). Each Redacted Highly Confidential Document shall have the same pagination as the Stamped Highly Confidential Document from which it is derived. The two copies of the Redacted Highly Confidential Document and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.”

7. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential designation) that it should not be copied by anyone, it shall bear the additional legend “Copying Prohibited” and no further copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

8. *Procedures for Obtaining Access to Highly Confidential Documents.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 11, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the attached Acknowledgment and file it with the Bureau, on behalf of the Commission, and serve it upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information, except that, where the person seeking access is one described in either clause 2 or 3 of paragraph 11, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 2 or 3 of paragraph 11, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information.

9. *Review of Stamped Highly Confidential Documents.* The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's in-house counsel; *provided, however*, that the Applicants shall make available for review all of their Stamped Highly Confidential Documents at the offices of one Applicant's Outside Counsel of Record. Parties reviewing these documents will be provided the following alternatives: (1) parties will be provided adequate opportunity to inspect the documents on site; (2) parties may inspect the documents on site and, subject to the provisions of paragraph 7, may request copies, at cost, of all or some of the documents; or (3) subject to the provisions of paragraph 7, parties may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a complete set of documents will be requested, parties are encouraged to make such requests at the time they submit the Acknowledgment. This will allow parties the opportunity to begin reviewing the documents at the end of the five-day period referred to above. All copies of documents that are removed from the Submitting Party's office will be stamped as described herein and must be returned or destroyed in accordance with the terms of this Protective Order.

10. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this Protective Order shall use the information solely for the preparation and conduct of this license transfer proceeding before the Commission as delimited in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this Protective Order.

11. *Permissible Disclosure.* Subject to the requirements of paragraph 8, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel

and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not described in clause 2 of this paragraph assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party.

12. *Non-Disclosure of Stamped Highly Confidential Information.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Protective Order, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed further.

13. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* Persons described in paragraph 8 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this Protective Order.

14. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

15. *Filings with the Commission.* Persons described in paragraph 11 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedure:

a. The cover or first page of the filing, and each page of the filing that contains or discloses Confidential Information subject to this order must be clearly marked: "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN MB DOCKET NO. 08-120 and WC DOCKET NO. 08-157 before the Federal Communications Commission;"

b. One copy of the filing shall be filed with the Secretary's Office. The filing shall be accompanied by a cover letter stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN MB DOCKET NO. 08-120 and WC DOCKET NO. 08-157 before the Federal Communications Commission." The filing shall be made under seal, and will not be placed in the Commission's public file.

c. Those portions of the filing that constitute Highly Confidential Information shall be clearly identifiable as such, so that those portions that are deemed to be Highly Confidential Information are readily identifiable based on an examination of the filing.

d. Two redacted copies of the filing containing no Highly Confidential Information (the "Redacted Highly Confidential Filing") shall also be filed with the Secretary's Office. Each Redacted Highly Confidential Filing shall have the same pagination as the Highly Confidential Filing from which it is derived. The two copies of the Redacted Highly Confidential Filing and their accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying

the Redacted Highly Confidential Filing shall state that the Submitting Party is filing a redacted version of the filing.

e. Two copies of the filing containing Highly Confidential Information and the accompanying cover letter shall be delivered in person to Elvis Stumbergs, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. In addition, a person making a filing containing Highly Confidential Information shall serve a copy on the relevant Submitting Party.

f. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

16. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Highly Confidential Documents or Highly Confidential Information; *provided, however,* that in rendering such advice and otherwise communicating with such client, Outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

17. *No Waiver of Confidentiality.* Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing Parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

18. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

19. *Violations of Protective Order.* Should a person that has properly obtained access to Highly Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this Protective Order.

20. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 11 shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material

whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph 4 and 11) may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

21. *Authority.* This Order is issued pursuant to Sections 4(i), 214(a) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214(a) and 310(d), Section 2 of the Cable Landing Act, 47 U.S.C. § 35, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau

APPENDIX A

Acknowledgment of Confidentiality

Stamped Highly Confidential Documents
Highly Confidential Information

MB Docket No. 08-120 and WC Docket No. 08-157

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

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 public interest organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Outside Counsel or Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 11 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at _____ this ___ day of _____, ____.

[Name]
[Position]
[Address]
[Telephone]
[Email]