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

In the Matter of	)	
	)	
Applications of	)	MB Docket No. 14-57
	)	
Comcast Corp. and	)	
Time Warner Cable Inc.	)	
	)	
For Consent To Assign or Transfer Control of	)	
Licenses and Authorizations	)	
and	)	
	)	MB Docket No. 14-90
AT&T, Inc. and	)	
DIRECTV	)	
	)	
For Consent To Assign or Transfer Control of	)	
Licenses and Authorizations	)	
	)	
	)	

ORDER

Adopted: October 7, 2014 **Released: October 7, 2014**

By the Chief, Media Bureau:

I. INTRODUCTION

1. By this Order, the Media Bureau adopts the attached Modified Joint Protective Orders in the Comcast-Time Warner Cable-Charter and AT&T-DIRECTV transaction proceedings. The Modified Joint Protective Orders are designed to provide interested parties with access to confidential information submitted in these proceedings and to address concerns certain parties raised concerning the adequacy of the protections provided in the protective orders previously adopted (together, the "Joint Protective Orders").[1]

II. BACKGROUND

2. On April 4, 2014 and June 11, 2014, the Media Bureau adopted and released the Joint Protective Orders.[2] The Joint Protective Orders "adopt procedures to … more strictly limit access to certain particularly competitively sensitive information, which, if released to competitors or those with whom the Submitting Party does business, would allow those persons to gain a significant competitive

[1] *See Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, Joint Protective Order, 29 FCC Rcd 3688 (2014) ("Comcast-TWC Joint Protective Order"); *Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Joint Protective Order, 29 FCC Rcd 6047 (2014) ("AT&T-DIRECTV Joint Protective Order").

[2] *See id*.

advantage or an advantage in negotiations."[3] On August 21, 2014 and September 9, 2014, we issued the Information Requests in these proceedings that seek, among other things, certain types of contracts (*e.g.*, programming and retransmission consent agreements) whose key terms have historically been treated as especially sensitive from a competitive standpoint and involve highly confidential information.[4] Certain programmers and broadcasters have expressed concern that the existing Joint Protective Orders do not provide adequate protection for such documents.[5]

3. On September 23, 2014, we issued a Public Notice seeking comment on the concerns of the programmers and broadcasters as well as proposals for additional protections.[6] We received a number of comments in response to that Public Notice. The applicants in these proceedings urge the Commission to reach a swift resolution so they can move forward with their document productions without delay, and state that identifying and segregating certain types of materials for additional protection would be a burdensome and time-consuming process.[7] Certain programmers and broadcasters reiterate their concerns that programming and retransmission agreements, and related documents, contain highly sensitive information, the disclosure of which would be detrimental to both their business operations and the public interest.[8] Accordingly, these commenters maintain that the Commission should review programming and retransmission agreements only through its consultation process with the U.S. Department of Justice, which already has copies of such agreements.[9] By contrast, other commenters argue that the agreements

[3] Comcast-TWC Joint Protective Order at 3688, ¶ 1; AT&T- DIRECTV Joint Protective Order at 6047, ¶ 1. A "Submitting Party" is a person or entity who submits a Confidential or Highly Confidential document. Comcast-TWC Joint Protective Order at 3690, ¶ 2; AT&T- DIRECTV Joint Protective Order at 6049, ¶ 2.

[4] *See* Information and Data Request to Comcast Corporation, MB Docket No. 14-57 (Aug. 21, 2014); Information and Data Request to Time Warner Cable Inc., MB Docket No. 14-57 (Aug. 21, 2014); Information and Data Request to Charter Communications, Inc., MB Docket No. 14-57 (Aug. 21, 2014); AT&T Information and Discovery Requests, MB Docket No. 14-90 (Sept. 9, 2014); DIRECTV Information and Discovery Requests, MB Docket No. 14-90 (Sept. 9, 2014) (collectively, the "Information Requests").

[5] *See* Letter from Mace Rosenstein, Covington & Burling LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 23, 2014); Letter from Rebecca S. Bryan, Vice President/General Counsel, Raycom Media, to William T. Lake, Chief, Media Bureau, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 17, 2014); Letter from Joshua N. Pila, LIN Television Corp., et al., to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 14-57 (Sept. 11, 2014).

[6] *See Media Bureau Seeks Comment on Issues Raised by Certain Programmers and Broadcasters Regarding the Production of Certain Documents in Comcast-Time Warner Cable-Charter and AT&T-DIRECTV Transaction Proceedings*, Public Notice, MB Docket Nos. 14-57, 14-90, DA 14-1383 (MB, rel. Sept. 23, 2014) ("Sept. 23 Public Notice").

[7] Letter from Kathryn A. Zachem, Senior Vice President, Regulatory and State Legislative Affairs, Comcast Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57 (Sept. 26, 2014) ("Comcast-TWC-Charter *Ex Parte* Letter") at 2; Letter from Maureen R. Jeffreys, Arnold & Porter LLP, Counsel for AT&T Inc., and William M. Wiltshire, Harris, Wiltshire & Grannis LLP, Counsel for DIRECTV, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-90 (Sept. 26, 2014) ("AT&T-DIRECTV Comments") at 2-4.

[8] *See, e.g.,* Letter from Mace Rosenstein, Covington & Burling LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 29, 2014) ("Joint Content Companies Comments") at 1; Letter from Greg Boulanger, Communications Corporation of America, et al., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 29, 2014) ("Joint Broadcasters Comments") at 1-2; Letter from Joshua N. Pila, Senior Counsel, LIN Television Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 29, 2014) ("LIN Comments") at 1.

[9] Joint Content Companies Comments at 1; Joint Broadcasters Comments at 2; LIN Comments at 2; *see also* Letter from Sally A. Buckman, Lerman Senter PLLC, Counsel for Journal Broadcast Corp., to Marlene H. Dortch, (continued….)

are relevant to claims made by the applicants and questions raised by commenters in the proceedings and that ensuring interested parties have access to this material is critical to analyses in the proceedings. These commenters assert that the documents therefore need to be filed with the Commission as part of the public record.[10] Some commenters, including the applicants, contend that the current protective orders are sufficient to protect the confidentiality of the types of materials the programmers and broadcasters identified.[11] In addition, some commenters discuss a number of steps the Commission could take to modify its existing protective orders and procedures to address concerns raised by programmers and broadcasters.[12]

III. DISCUSSION

4. With today's Order, we emphasize the protections our Joint Protective Orders offer, including sanctions for violations. We clarify the meaning of the term "Competitive Decision-Making," as defined in the Joint Protective Orders.[13] We also adopt today the Modified Joint Protective Orders (attached) in both proceedings in order to protect a uniquely broad scope of information that is confidential not just to the Applicants but to third parties as well.[14] These Modified Joint Protective Orders retain the protections provided in the prior Joint Protective Orders and, as the unique circumstances in these proceedings warrant, provide additional procedures for third-party objections to certain individuals executing Acknowledgements of Confidentiality under the Modified Joint Protective Orders. Moreover, this Order requires that all individuals, whether or not they previously executed Acknowledgements pursuant to the Joint Protective Orders, must file an Acknowledgement of Confidentiality under the Modified Joint Protective Orders in order to access Confidential or Highly

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Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 26, 2014) ("Journal Comments") at 1-2; Letter from Darci J. Bailey, A&E Television Networks, LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 29, 2014) ("A&E Comments") at 3; Letter from Tara M. Corvo, Mintz Levin, Counsel for AMC Networks, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 26, 2014) ("AMC Comments") at 2-3; Letter from Peter D. Steckelman, SVP, Business & Legal Affairs, The Tennis Channel, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 29, 2014) ("Tennis Channel Comments") at 2; Letter from Alfred C. Liggins, III, President/CEO, TV One, LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 29, 2014) ("TV One Comments") at 2.

[10] ACA Comments at 9-11; DISH Network Comments at 2-3; Letter from Tiffany West Smink, CenturyLink, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-57, 14-90 (Sept. 29, 2014) ("CenturyLink Comments") at 2.

[11] Comcast-TWC-Charter *Ex Parte* Letter at 2; AT&T-DIRECTV Comments at 2; Andrew Jay Schwartzman Comments at 2; ACA Comments at 5-7.

[12] *See, e.g.,* Comcast-TWC-Charter *Ex Parte* Letter at 2 (require individuals who have previously signed Acknowledgements of Confidentiality under the Joint Protective Orders to recertify that they are not involved with "Competitive Decision-Making"); *id.* at 3 (make materials available for review only at the offices of the applicant's counsel or through a remote access Internet platform); BBC America Comments at 2 (provide an opportunity to object by any party to an agreement that applicants are requested to submit); AMC Comments at 3 (limit the ability of third parties to print or copy agreements); TV One Comments at 2 (anonymize references to agreements and related materials in the final version of any Commission order).

[13] *See* Comcast-TWC Joint Protective Order at 3688, ¶ 2; AT&T-DIRECTV Joint Protective Order at 6047, ¶ 2.

[14] *See Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations*, Joint Protective Order, MB Docket No. 14-57, DA 14-1464 (MB, rel. Oct. 7, 2014) ("Comcast-TWC Modified Joint Protective Order"); *Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Joint Protective Order, MB Docket No. 14-90, DA 14-1465 (MB, rel. Oct. 7, 2014) ("AT&T-DIRECTV Modified Joint Protective Order").

Confidential Information submitted in these proceedings.[15] In addition, the Modified Joint Protective Orders impose additional procedures for access to certain Highly Confidential Information. Specifically, 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 (the "Video Programming Confidential Information" or "VPCI")[16] are subject to restrictions on access, printing, copying, or transmittal, as described below.

5. The Modified Joint Protective Orders include provisions already present in the Joint Protective Orders that provide robust protection for Confidential and Highly Confidential Information. First, the restrictions applicable under the Orders apply to *individuals*, not firms or organizations. Access to all Confidential and Highly Confidential Information is restricted to specific individuals who execute Acknowledgements of Confidentiality and file such Acknowledgements in the public record. **Each such individual is strictly prohibited from sharing such information, or knowledge derived therefrom, with any other individual, either inside or outside of that Reviewing Party's firm or organization, except where that other individual has also executed an Acknowledgement or under certain limited disclosure exceptions.**[17] Public disclosure of the identity of individuals who have signed the Acknowledgements permits interested parties, whether they are the applicants or other entities whose business information may be included in the record of a Commission proceeding, who have concerns about a specific individual's access to such information, to object to disclosure to that individual. As noted below, the Modified Joint Protective Orders specify procedures for objection intended to ensure that objections by third parties as well as by the Submitting Parties are heard and addressed prior to the disclosure of any Confidential or Highly Confidential Information to a particular individual.

6. Further, under both the Joint Protective Orders and the Modified Joint Protective Orders, those who obtain access to Confidential or Highly Confidential Information "shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding" and, unless otherwise provided, "shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings."[18] **We emphasize that the restrictions on the use and disclosure of Confidential or Highly Confidential Information do not terminate at end of the respective proceedings but remain in perpetuity.** Also, except as otherwise provided, all documents stamped as Confidential or Highly Confidential must be destroyed or returned to the Submitting Party within two weeks after conclusion of

[15] *See* Comcast-TWC Modified Joint Protective Order at Attach. B; AT&T-DIRECTV Modified Joint Protective Order at Attach. B.

[16] The Commission has defined "relating to" in these proceedings in the Information Requests as follows: "'relating to' means in the whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating." *See, e.g.,* Information and Data Request to Comcast Corporation, MB Docket No. 14-57 (Aug. 21. 2014), Definition 59.

[17] *See* Comcast-TWC Joint Protective Order at 3692-94, 3697, ¶¶ 10-11, 13-16, Attach. B; AT&T-DIRECTV Joint Protective Order at 6051-53, 6056, ¶¶ 10-11, 13-16, Attach. B; Comcast-TWC Modified Joint Protective Order at ¶¶ 12-13, 15-18, Attach. B; AT&T-DIRECTV Modified Joint Protective Order at ¶¶ 12-13, 15-18, Attach. B.

[18] *See* Comcast-TWC Joint Protective Order at 3692, ¶ 10; AT&T-DIRECTV Joint Protective Order at 6051, ¶ 10; Comcast-TWC Modified Joint Protective Order at ¶ 12; AT&T-DIRECTV Modified Joint Protective Order at ¶ 12.

the proceeding or any administrative or judicial review.[19] Other than limited specified instances, individuals may not keep any materials containing Confidential or Highly Confidential Information beyond the close of the proceeding even for strictly individual reference.[20] In addition, the Joint Protective Orders specify that counsel must certify compliance with the destruction requirements and shall deliver such certification to counsel for the Submitting Party within three weeks after the conclusion of the proceeding.[21] In the Modified Joint Protective Orders, we also require any individual who has signed an Acknowledgement to file such a certification with the Commission and provide that certifying individuals who fail to comply with the destruction requirements of the Modified Joint Protective Orders will be subject to applicable criminal penalties for making false statements to the Commission.[22]

7. In addition, as stated in the Joint Protective Orders and reiterated in the Modified Joint Protective Orders, the Commission retains full authority to fashion and impose appropriate sanctions for violations of its protective orders, which may include, but are not limited to, "suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding."[23] The Acknowledgement signed by every individual with access to Confidential or Highly Confidential Information expressly acknowledges "that a violation of the Joint Protective Order is a violation of an order of the Federal Communications Commission (Commission)" and that sanctions are available.[24] Both the Orders and the Acknowledgement further recognize that additional remedies may be available at law or equity.[25] Potential sanctions are not limited to counsel alone. The Commission will not hesitate to take swift and decisive enforcement action where warranted for violation of its orders.

8. We emphasize that not all individuals are qualified to execute an Acknowledgement and review Confidential or Highly Confidential Information. Both the Joint Protective Orders and the Modified Joint Protective Orders prohibit access to Confidential and Highly Confidential Information by any person involved in "Competitive Decision-Making," which 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, where the third party is

[19] Comcast-TWC Joint Protective Order at 3694-95, ¶ 20 ("No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel may retain, under the continuing strictures of this Joint Protective Order, two copies of pleadings…and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential information."); AT&T-DIRECTV Joint Protective Order at 6053-54, ¶ 20; Comcast-TWC Modified Joint Protective Order at ¶ 22; AT&T-DIRECTV Modified Joint Protective Order at ¶ 22.

[20] Reviewing Parties may keep two unredacted copies of any filings they prepare and one copy of the unredacted version of Commission orders. Comcast-TWC Modified Joint Protective Order at ¶ 22; AT&T-DIRECTV Modified Joint Protective Order at ¶ 22.

[21] *Id.*

[22] *Id.*; 18 U.S.C. § 1001.

[23] Comcast-TWC Joint Protective Order at 3694, ¶ 19; AT&T-DIRECTV Joint Protective Order at 6053, ¶ 19; Comcast-TWC Modified Joint Protective Order at ¶ 21; AT&T-DIRECTV Modified Joint Protective Order at ¶ 21.

[24] Comcast-TWC Joint Protective Order at 3697, Attach. B; AT&T-DIRECTV Joint Protective Order at 6056, Attach. B.

[25] *See* Comcast-TWC Joint Protective Order at 3694, ¶ 19; AT&T-DIRECTV Joint Protective Order at 6053, ¶ 19; Comcast-TWC Modified Joint Protective Order at ¶ 21; AT&T-DIRECTV Modified Joint Protective Order at ¶ 21.

claiming a confidentiality interest in the information at issue.[26] One purpose of this restriction is to exclude persons whose activities on behalf of their clients would place them in a situation where their obligations under a protective order are likely to be put at risk, even if unintentionally or unconsciously. In the context of the types of contracts the programmers and broadcasters have identified, the high commercial sensitivity of the contracts leads us to conclude that any individual who participates in the negotiation of such contracts likely has been involved in "Competitive Decision-Making," and allowing such an individual to review the documents would raise the very problem the restriction is designed to address. Individuals who execute Acknowledgements, and anyone who considers objecting to an Acknowledgement, should keep this interpretation of "Competitive Decision-Making" in mind.

9. Individuals who have already signed Acknowledgements of Confidentiality pursuant to the Joint Protective Orders should review their understanding of what constitutes "Competitive Decision-Making" to ensure that it is consistent with the above interpretation. As discussed below, any individual who believes he or she is eligible and wishes to have access to Confidential or Highly Confidential Information under the Modified Joint Protective Orders must file an Acknowledgement of Confidentiality pursuant to the Modified Joint Protective Orders, regardless of whether he or she previously filed an Acknowledgement under the Joint Protective Orders. Any individual who has previously obtained access to any Confidential or Highly Confidential Information under the Joint Protective Orders shall cease accessing or reviewing such Information until the Acknowledgement process, including resolution of any objections pursuant to the Modified Joint Protective Orders, is resolved and completed with respect to that individual. Any such individual must, within five business days after the date of this Order, either execute an Acknowledgement of Confidentiality pursuant to the Modified Joint Protective Orders, or return any materials containing Confidential or Highly Confidential Information to the Submitting Party or destroy such materials. Such individuals must serve on the Submitting Party and file with the Commission within five business days after the date of this Order either the executed Acknowledgement or a certification that they have complied with the destruction requirement.

10. All individuals, whether or not they previously executed Acknowledgements pursuant to the Joint Protective Orders, must file an Acknowledgement of Confidentiality under the Modified Joint Protective Orders with the Commission and serve it on the Submitting Party before gaining access to Confidential or Highly Confidential documents produced in these proceedings. Acknowledgements filed with the Commission pursuant to paragraph 9 above, or notice thereof, will be posted on the Transaction Team web page for the specific transaction.[27] This posting on the web page will trigger a three-business day period during which a Submitting Party or any other person whose confidential business information would be subject to disclosure to the individual filing the Acknowledgement may object to the individual's access, *e.g.*, on the ground that the individual is involved in "Competitive Decision-Making."[28] Any objection must be filed with the Commission and simultaneously delivered to the Submitting Party and to the individual filing the Acknowledgement, and contain support for the objection, *e.g.*, information the objecting party considers relevant to determining whether the individual in question is involved in "Competitive Decision-Making." Just as in the Joint Protective Orders, a Submitting Party shall not make Confidential or Highly Confidential Information subject to the Modified Joint Protective Orders available to any person submitting an Acknowledgement until the opportunities for objection have

[26] Comcast-TWC Joint Protective Order at 3688, ¶ 2; AT&T-DIRECTV Joint Protective Order at 6047, ¶ 2; Comcast-TWC Modified Joint Protective Order at ¶ 2; AT&T-DIRECTV Modified Joint Protective Order at ¶ 2.

[27] *See* http://www.fcc.gov/transaction/comcast-twc; http://www.fcc.gov/transaction/att-directv.

[28] *See* Comcast-TWC Modified Joint Protective Order at ¶ 2; AT&T-DIRECTV Modified Joint Protective Order at ¶ 2.

elapsed and any such objection has been resolved.[29]

11. The Modified Joint Protective Orders further reflect our conclusion that, under the particular circumstances presented here, additional restrictions on the printing, copying, and transmittal of VPCI should be imposed beyond those present in the Joint Protective Orders in these proceedings.[30] Once an individual has executed an Acknowledgement under the Modified Joint Protective Orders and any objections have been resolved, permitting access to Highly Confidential Information, the individual will also be permitted to review VPCI, but only through a Submitting Party's counsel either in counsel's offices or through a remote access document review platform (both options which shall be made available). We instruct the applicants to ensure that the document review platform, whether at the Submitting Party's attorney's office or at a remote location, will permit Reviewing Parties to reasonably access and review VPCI, but not to print, copy, or transmit the materials.[31] We believe such a process properly balances the need for access to the information contained in these documents for the purpose of analyzing the pending applications against the contracting parties' legitimate interest in preventing dissemination of the agreements.

12. We acknowledge that the Applicants will require a reasonable amount of time to segregate documents containing VPCI from their other documents and to establish a reviewing platform; we also acknowledge the need to make documents available to the Commission and commenters as expeditiously as possible in these proceedings. Therefore, the Applicants have two options for establishing such document review platforms. Both options require the Applicants to promptly submit all documents and information to the Commission. Under option one, an Applicant must, within ten business days of the date of this Order, establish the document review platform and segregate all documents containing VPCI for review through such platform. If an Applicant is unable to fully segregate documents containing VPCI from its other Stamped Confidential and Highly Confidential documents within the time period prescribed in option one, the Applicant must make all Stamped Confidential and Highly Confidential Documents produced in these proceedings, including those containing VPCI, available to Reviewing Parties via the required document review platform within ten business days after the release of this Order. Such Applicants must complete the segregation of VPCI within three weeks of the release of this Order. Once the segregation is complete, Highly Confidential Information other than VPCI shall be made available under the terms applicable to Highly Confidential Information.

13. The additional procedures included in the Modified Joint Protective Orders, together with the existing provisions also contained in the Joint Protective Orders, provide an appropriate balance between the legitimate interests of the applicants, contracting parties, and the Commission in safeguarding competitively sensitive information and the need to make such information available to encourage meaningful participation by other parties in these proceedings. In reaching this conclusion, we recognize that the VPCI contain highly sensitive information that is central to the contracting parties' (including both the Applicants' and third parties') business strategies, including, among other things, pricing and business terms. In addition, the simultaneous consideration of these two transactions will make available a scope of highly sensitive information that is both uniquely broad and extremely detailed. We anticipate that Submitting Parties will designate such documents as Highly Confidential Information.

[29] Comcast-TWC Modified Joint Protective Order at ¶ 8; AT&T-DIRECTV Modified Joint Protective Order at ¶ 8.

[30] We do not view it as a violation of our order to fail to segregate documents containing VPCI in these proceedings if a Submitting Party can demonstrate that it used all reasonable efforts to identify and segregate all documents containing VPCI for purposes of the Modified Joint Protective Orders.

[31] In addition, under an Acknowledgement of Confidentiality filed pursuant to the Modified Joint Protective Orders, a reviewing party avows not to take a screenshot or otherwise capture an image of a document containing VPCI.

At the same time, the Commission's review of these two major transactions requires analysis of issues directly implicated by the information contained in these materials, including competition in the video distribution market. The materials at issue are critical to a full and effective review. Further, the Commission is obligated and committed to conducting its review with as much transparency as the circumstances allow, to permit meaningful and effective public engagement on the issues. We seek to balance the legitimate need to protect highly confidential business information with the public interest in a fair and open review.

14. We find it unnecessary to establish other special protections advocated by some of the interested parties. In particular, we do not believe it is necessary to restrict our review of the VPCI to viewing documents in the records of the Department of Justice. We stress that document productions involving contracts like those at issue in these proceedings and using protective orders substantially similar to the Joint Protective Orders and Modified Joint Protective Orders are not unique to the pending transactions.[32] We find that limiting our review to documents in the records of the Department of Justice or other additional protections advocated by some interested parties are unnecessary in light of the protections in place pursuant to this Order and would unduly burden and delay the Commission's review, inhibit public participation, and therefore disserve the public interest.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED**, that pursuant to the authority contained in sections 4(i), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214 and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.283 of the Commission's rules, 47 C.F.R. § 0.283, the additional requirements to access and review Confidential and Highly Confidential Information as defined in the Joint Protective Orders specified in this Order are adopted.

16. **IT IS FURTHER ORDERED**, that pursuant to the authority contained in sections 4(i), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214 and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.283 of the Commission's rules, 47 C.F.R. § 0.283, the Modified Joint Protective Orders are adopted. The Modified Joint Protective Orders are effective upon adoption of this Order.

17. **IT IS FURTHER ORDERED** that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

[32] For example, in the Adelphia transaction proceeding, the Commission requested competitively sensitive information, including programming agreements, from the cable company applicants in that proceeding. The Commission made those documents available for review by interested parties subject to the protections of a second protective order in that proceeding. *See Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees*, Second Protective Order, 20 FCC Rcd 20073 (2005). *See also* ACA Comments at 3-7.