

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

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

ORDER

Adopted: October 22, 2014

Released: October 22, 2014

By the Chief, Media Bureau:

1. On October 7, 2014, the Media Bureau issued an Order modifying the Joint Protective Orders in these proceedings. We required potential Reviewing Parties to re-sign the Acknowledgments required under the Joint Protective Orders and provided third parties a procedure by which they could object to certain individuals being permitted to review confidential information.

2. Pursuant the Modified Joint Protective Orders, various individuals executed Acknowledgments and filed them with the Commission. Between October 15, 2014 and October 20, 2014, various third parties (the "Content Companies") filed objections against every individual who sought to review Highly Confidential Information, including Video Programming Confidential Information, under the Modified Joint Protective Orders. For example, on October 15, 2014, the

1 See Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, Order, DA 14-1463 (Media Bur. Oct. 7, 2014).

2 Id. at ¶¶ 9-10.

3 Video Programming Confidential Information is defined in the Modified Joint Protective Orders as 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.

4 The Content Companies include: CBS Corp. Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc. Discovery Communications LLC and TV One, LLC also signed the objections filed October 15, 2014, and Discovery (continued....)

Content Companies filed an objection to eight individuals.⁵ The Content Companies “reiterate[d] their objection to permitting *any* individual to access their highly confidential carriage agreements” with the Applicants, an objection we rejected when we adopted the Modified Joint Protective Orders. Of the eight individuals, they provided specific objections to only two.⁶ On October 15, 2014, the Content Companies also filed objections in Docket 14-90 with respect to 62 individuals, all of whom are outside counsel or outside experts for AT&T, one of the Applicants.⁷ The Content Companies provided specific objections to none of the individuals, but stated that their objections “rest on their longstanding objection to permitting *any* individual to access their highly confidential carriage agreements.” On October 16, 2014, the Content Companies filed objections to 108 individuals in Docket 14-57, again “rest[ing] on their longstanding objection to permitting *any* individual to access their highly confidential carriage agreements.”⁸ The Content Companies provided specific objections to only 14 of the 108 individuals. With regard to most of the 14, the Content Companies argued not that the individuals were engaged in substantive contract negotiations or substantive business decisions of their clients, but that by advising and advocating for their clients on general content distribution and retransmission consent matters, these attorneys necessarily must consult with their clients and colleagues concerning Competitive Decision Making matters, and therefore should be barred under the terms of the Modified Joint Protective Order. They also argued that other individuals, employees of the Greenlining Institute, a public policy non-profit organization, did not qualify as Outside Counsel or Outside Consultants.⁹ On October 20, 2014, the Content Companies filed another set of objections in Docket 14-57, this time to 22 individuals, again “rest[ing] on their longstanding objection to permitting *any* individual to access their highly confidential carriage agreements.”¹⁰ The Content Companies provided specific objections to only four individuals, all employees of non-commercial entities, including an attorney with the California Public Utility

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Communications LLC filed separate objections to many of the individuals objected to by the Content Companies in their later filings.

⁵ Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, Docket No. 14-57, filed by Mace Rosenstein, Covington & Burling, Counsel for the Content Companies (Oct. 15, 2014). The identical Objection was filed in Docket No. 14-90.

⁶ The Content Companies alleged that one individual was involved in competitive decision-making, and objected to the other on the ground he was not an Outside Counsel or Outside Consultant, as those terms are used in the Modified Joint Protective Orders.

⁷ Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, Docket No. 14-90, filed by Mace Rosenstein, Covington & Burling, Counsel for the Content Companies (Oct. 16, 2014).

⁸ Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, Docket No. 14-57, filed by Mace Rosenstein, Covington & Burling, Counsel for the Content Companies (Oct. 16, 2014). Discovery Communications LLC, by their counsel, Mace Rosenstein, Covington & Burling, filed a similar objection with respect to 106 individuals. The Content Companies also filed an objection in Docket 14-90 with respect to the employees of the Greenlining Institute, and with respect to two additional outside counsel for AT&T.

⁹ We note that the Modified Joint Protective Order, paragraph 2, provides that “The term “Outside Counsel of Record” includes any attorney representing a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making,” and The term “Outside Consultant” includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.”

¹⁰ Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, Docket No. 14-57, filed by Mace Rosenstein, Covington & Burling, Counsel for the Content Companies (Oct. 20, 2014).

Commission. In Docket 14-90, the Content Companies objected to 14 individuals, providing no specific objections to any of them.¹¹

3. On October 20, 2014, a number of commenters filed a motion for an extension of time to file replies in Docket 14-57.¹² Among other points, they argue that certain third-party programmers “do not want any of the interested parties’ outside counsel or experts to view [their programming contracts],” and have “set out to nullify” the Modified Joint Protective Order by filing multiple objections to requests for access. These commenters argue that the programming information is of particular importance in evaluating the applications at issue, and that “these issues cannot be joined, and that analysis cannot be conducted, without reasonable access by both the FCC and outside counsel and experts not involved in competitive decision-making.”

4. We agree with these commenters that their current inability to review Highly Confidential Information that has been submitted in these dockets significantly hampers their ability to meaningfully comment and participate in these proceedings, in both Docket 14-57 and Docket 14-90. Accordingly, we are suspending the pleading cycles and stopping our 180-day informal time clock in both dockets. After we rule on the objections, we will issue a Public Notice setting forth new pleading cycles that will provide sufficient time for commenters to review the relevant materials and prepare their comments. This action is taken pursuant to authority delegated by Section 0.283 of the Commission’s Rules.¹³

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

¹¹ Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information, Docket No. 14-90, filed by Mace Rosenstein, Covington & Burling, Counsel for the Content Companies (Oct. 20, 2014).

¹² Motion for Further Extension of Time to File Replies, filed by Dish Network Corp., COMPTTEL, Monumental Sports and Entertainment, RCN, Grande Communications, Inc., Choice Cable TV of Puerto Rico, and Writers Guild of America, West, Inc. (Oct. 20, 2014).

¹³ 47 C.F.R. § 0.283.