

**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	)	
	)	
AT&T, Inc. and	)	MB Docket No. 14-90
DIRECTV	)	
	)	
For Consent To Assign or Transfer Control of	)	
Licenses and Authorizations	)	

ORDER

Adopted: December 3, 2014

Released: December 3, 2014

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, the Media Bureau partially rejects objections filed against individuals, listed in the Appendix, who filed Acknowledgments to the Modified Joint Protective Orders in the above-captioned proceedings, while holding in abeyance objections that are not yet ripe.

II. BACKGROUND

2. On October 7, 2014, the Media Bureau issued an Order modifying the Joint Protective Orders in these proceedings.¹ We required potential Reviewing Parties² 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 under the Modified Joint Protective Orders.³ Pursuant to the Modified Joint Protective Orders, various individuals executed

¹ See *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, DA 14-1463 (MB, rel. Oct. 7, 2014) (“VPCI Order”). See also *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, Modified Joint Protective Order, DA 14-1464 (MB, rel. Oct. 7, 2014); *Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Modified Joint Protective Order, DA 14-1465 (MB, rel. Oct. 7, 2014) (together, the “Modified Joint Protective Orders”). Those protective orders have since been amended with changes not relevant to the issues raised here.

² Capitalized terms are used as defined in the Modified Joint Protective Orders.

³ VPCI Order at ¶¶ 9-10.

Acknowledgments and filed them with the Commission. Starting on October 15, 2014, seven third-parties (the “Content Companies”)⁴ filed objections in both proceedings against every individual who signed an Acknowledgment. Nearly identical objections were filed by Discovery Communications LLC. On November 4, 2014, as modified on November 10, 2014, we rejected the objections filed against 244 individuals.⁵

3. The Content Companies object to the various outside counsel and consultants (and their employees), all of whom are listed in the Appendix, on the ground that either they are directly involved in negotiating programming or retransmission agreements or their work requires them to consult with those involved in negotiating programming or retransmission agreements.⁶ A group of broadcast companies has filed an objection on the same grounds.⁷ Currently, however, due to a court-ordered stay,⁸ Reviewing Parties may not have access under the Modified Joint Protective Orders to confidential information regarding the Content Companies’ or broadcasters’ programming or retransmission agreements or the negotiations surrounding those agreements. Until the stay is lifted, the objections on these grounds are not ripe: until, and unless, Reviewing Parties have access to Video Programming Confidential Information, the fact that they may be involved in negotiating programming or retransmission agreements does not expose the Content Companies or the broadcasters to competitive harm. Indeed, the Content Companies have stated that they object to any individual only to the extent that he or she seeks access to Video Programming Confidential Information.⁹

4. The Content Companies also state a separate objection to all of DISH’s outside counsel,

⁴ The self-styled Content Companies are: CBS Corp.; Scripps Networks Interactive, Inc.; The Walt Disney Co.; Time Warner Inc.; Twenty First Century Fox, Inc.; Univision Communications Inc.; and Viacom Inc. As used in this Order, the term also includes Discovery Communications LLC.

⁵ *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, DA 14-1605 (MB, rel. Nov. 5, 2014); *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, DA 14-1631 (MB, rel. Nov. 10, 2014).

⁶ See, e.g., *October 15th Objection* at 2-3.

⁷ *Objection*, MB Docket No. 14-57, filed by Tribune Media Co., Raycom Media, Inc., Gray Television, Inc., Gannett Co., Inc., and Graham Media Group (Oct. 14, 2014).

⁸ *CBS Corp. et al. v. Federal Communications Commission*, Docket No. 14-1242 (Nov. 21, 2014). The court granted the Content Companies’ request for a stay of the Commission’s order permitting disclosure of Video Programming Confidential Information pursuant to the Modified Joint Protective Orders. Those orders define Video Programming Confidential Information as “information that is Highly Confidential Information, and is 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.”

⁹ *Content Companies’ Comments Regarding Cogent Communication Group’s response to Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information* (Oct. 22, 2014) at 2, 3-4. We recognize that the Content Companies also state that they would continue to stand by the particularized objections they have made. *Id.* at 4 n.9. However, other than the objections addressed in this Order below, the only particularized objections raised by the Content Companies go to ten individual’s status as outside counsel, which were rejected by our November 4 and November 10 *Orders*, to which the Content Companies have not appealed, and to Ross Lieberman, in-house Counsel, American Cable Association, and Ellen Stutzman, in-house counsel, Writers Guild of America, West, which objections remain outstanding, as noted below.

outside consultants and their employees.¹⁰ They argue, *inter alia*, that these individuals would not adequately protect their confidential information, citing two instances where DISH did not properly follow rules regarding protective orders and evidence.¹¹ Those cases, however, are not on point – neither involves a violation of a protective order or disclosure of another party’s confidential information¹² -- and they do not indicate that DISH’s outside counsel or consultants would violate the Commission’s protective orders. Indeed, the Content Companies do not argue that DISH’s current counsel and consultants were even involved in these proceedings. It is the individual attorney or consultant who is bound by our protective orders and who signs the Acknowledgment recognizing and agreeing to their terms. We will not sustain an objection against an individual because the client may have violated a discovery rule in another context. There is no evidence that the individuals at issue here would not follow the Commission’s regulations and the provisions of the protective orders. Accordingly, we reject the objections of Content Companies on these grounds as to these individuals having access to Confidential and Highly Confidential Information, not including Video Programming Confidential Information, under the Modified Joint Protective Orders, as amended.

5. We are today issuing an order re-setting the pleading schedules in these proceedings. Under the highly unusual circumstances presented here – specifically, the need to move forward expeditiously while the court considers whether Video Programming Confidential Information may be reviewed under the protective orders and the lack of any objections to these individuals reviewing any other Highly Confidential Information -- we find no reason why the individuals listed in the Appendix should not be permitted access under the Modified Joint Protective Orders, as amended, to that Highly Confidential Information that is not also Video Programming Confidential Information and subject to the stay.¹³ When the court determines whether Video Programming Confidential Information may be made available pursuant to the Modified Joint Protective Orders, we will address the Content Companies’ and the broadcasters’ remaining objections. Until we do, under the terms of the protective orders, none of the individuals listed in the Appendix would have access to Video Programming Confidential Information even were the court to reject the petitioners’ claims on the merits.

6. Accordingly, it is ORDERED that in accordance with the paragraph 8 of the Modified Joint

¹⁰ These are: Sarah K. Leggin, Georgios A. Leris, Andrew W. Guhr, Stephanie A. Roy, Pantelis Michalopoulos, Christopher Bjornson, Lucrezio Figurelli, William Zarukas, Martha H. Rogers, David Sappington, George L. Paul, Dwayne Robinson, Christian Escobar, Nebiye Girma and Adam S. Wehler.

¹¹ See, e.g., *Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information*, MB Docket No. 14-57 (filed Oct. 15, 2014) (“Oct. 15th Objection”) at 4.

¹² In one case, DISH initially requested confidential treatment for various pieces of its business information and then released some of that information publicly. The Commission admonished DISH for not informing the Commission that the information was now public and for simultaneously asking for confidential treatment for information while publicly disclosing portions of it. *EchoStar Satellite Corp. v. Young Broadcasting, Inc.*, 16 FCC Rcd 15070, 15075-76 ¶ 12 (Cable Serv. Bur. 2001). In the other, DISH was sanctioned for not preventing its emails from automatically being deleted once it reasonably anticipated that litigation could occur. *VOOM HD Holdings LLC v. EchoStar Satellite LLC*, 93 A.D.3d 33, 939 N.Y.S.2d 231 (N.Y. App. Div. 1st Dept. 2012).

¹³ This Order does not address the objections filed against Ross Lieberman, in-house Counsel, American Cable Association, and Ellen Stutzman, in-house counsel, Writers Guild of America, West.

For the sake of clarity, we also note the Content Companies’ statement in their November 5, 2014 *Objection*, that they are not formally objecting to one further individual who filed an Acknowledgment, Joseph G. Donahue, who is outside counsel for five telecom companies in Maine, because in the November 4, 2014, *Order*, the Bureau rejected the Content Companies’ “categorical objections” that no person should be able to have access to their confidential information. The Content Companies asked that if the Bureau’s order was stayed (or presumably overruled) that such action also apply to Mr. Donahue.

Protective Orders, as amended, and 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), 47 C.F.R. § 1.102(b)(1), and authority delegated under section 0.283 of the Commission's rules, 47 C.F.R. § 0.283, the Objections raised against the individuals listed in the Appendix are rejected to the extent stated herein.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

APPENDIX

Sarah K. Leggin, Outside Counsel to Netflix & DISH Network¹⁴
Georgios A. Leris, Outside Counsel to Netflix & DISH Network
Andrew W. Guhr, Outside Counsel to Netflix & DISH Network
Stephanie A. Roy, Outside Counsel to DISH Network
Pantelis Michalopoulos, Outside Counsel for DISH Network
Christopher Bjornson, Outside Counsel for DISH Network
Lucrezio Figurelli, Outside Consultant for DISH Network
William Zarukas, Outside Consultant for DISH Network
Martha H. Rogers, Outside Consultant for DISH Network
David Sappington, Outside Consultant for DISH Network
Markham C. Erickson, Outside Counsel for Netflix
Damon Kalt, Outside Counsel for Netflix
Natalya Seay, Outside Counsel for Netflix
James M. Hobbs, Employee of Outside Counsel for Netflix
George L. Paul, Outside Counsel for DISH Network
Dwayne Robinson, Employee of Outside Consultant for DISH Network
Christian Escobar, Employee of Outside Counsel for DISH Network
Nebiye Girma, Employee of Outside Counsel for DISH Network
Adam S. Wehler, Employee of Outside Counsel for DISH Network
Barbara Esbin, Outside Counsel to American Cable Association
Maayan Lattin, Outside Counsel for American Cable Association
Noah Cherry, Outside Counsel for American Cable Association

¹⁴ Names and titles are as listed in the Objections filed by the Content Companies.