

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CABLEVISION SYSTEMS CORPORATION
and CSC HOLDINGS, LLC,

Plaintiffs,

v.

VIACOM INTERNATIONAL INC. and
BLACK ENTERTAINMENT TELEVISION LLC, :

Defendants.
----- X

13 CIV 1278 (LTS) (JLC)

**MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANTS' PROPOSED REDACTIONS**

Defendants Viacom International Inc. and Black Entertainment Television LLC (collectively, "Viacom") respectfully submit this memorandum in support of their motion to redact portions of the Complaint filed by Plaintiffs Cablevision Systems Corporation and CSC Holdings, LLC (collectively, "Cablevision") that reflect confidential, proprietary and commercially and competitively sensitive information, the disclosure of which will cause harm to Viacom.

PRELIMINARY STATEMENT

On February 26, 2013, Cablevision brought this action and challenged a January 1, 2013 Agreement (the "License Agreement") between Cablevision and Viacom pursuant to which Cablevision was granted the right to distribute certain of Viacom's programming services to Cablevision's customers. The Complaint filed by Cablevision includes contractual terms extracted from this and other confidential License Agreements entered into between Viacom and Cablevision that reveal highly sensitive, negotiated business terms that are routinely protected from disclosure by federal courts. As is often the case with license agreements between

programmers and distributors, the License Agreement contains a confidentiality provision protecting its terms and the course of dealing between the parties from disclosure to competitors and customers of both Viacom and Cablevision, and these terms and conditions have not previously been made public.

The release of the confidential information will severely prejudice Viacom as detailed in the accompanying affidavit of Denise Denson, Executive Vice President of Content, Distribution and Marketing at Viacom Media Networks. As Ms. Denison explains, the terms and conditions of the License Agreement, as well as its negotiation, is a jealously guarded secret at Viacom. It would severely harm Viacom in its negotiations with other distributors – the competitors of Cablevision – and in its competition with other programming services – against whom Viacom competes to obtain distribution for its programming services – if Viacom’s customers and competitors were aware of the information Viacom seeks to have redacted.

There is no reason to disclose publicly the confidential information. Viacom’s redacted version of the Complaint provides clear notice to the public of Cablevision’s claims and reasons for challenging the 2013 License Agreement. Cablevision’s clear purpose in seeking the release of the information Viacom seeks to have redacted is solely to attempt to create unfavorable publicity, all in furtherance of Cablevision’s effort to renegotiate the terms of an agreement it entered into less than two months before filing this action. Indeed, it is not surprising given Cablevision’s strategy here that it issued a press release when it filed its lawsuit (*see* Denson Affidavit, Exhibit C), and has generated considerable media attention as a result, all without the public filing of any complaint.

ARGUMENT

Cablevision seeks to cause irreparable harm to the business and reputation of Viacom by seeking to disclose confidential, non-public business terms between the parties. While Viacom has proposed reasonable, minimal redactions of Cablevision's Complaint solely to protect proprietary terms concerning, *inter alia*, pricing, carriage, and marketing of Viacom's programming services (*see* Exhibit A), Cablevision appears intent on using this action as a cloak to violate the License Agreement's confidentiality provision to which Cablevision only recently agreed. Cablevision should not be allowed to reveal such highly confidential and competitively sensitive information to the public and other competitors, and in the process hurt Viacom competitively.

I. The Complaint Contains Sensitive, Confidential Business Terms That Should be Protected From Disclosure

Cablevision's Complaint references confidential contractual terms and proprietary information contained in the parties' License Agreement. Such information should be protected from public disclosure under Rule 26(c)(1). *See* Fed. R. Civ. P. 26(c)(1) ("The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.")

As the Supreme Court has stated, "the right to inspect and copy judicial records is not absolute" and may not extend to, among other things, "sources of business information that might harm a litigant's competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *see also, e.g., Standard Inv. Chartered, Inc. v. Nat'l Ass'n of Sec. Dealers*, No. 07 CIV 2014 (SWK), 2008 WL 199537, at *8 (S.D.N.Y. Jan. 22, 2008) ("The interest in protecting

‘business information that might harm a litigant’s competitive standing’ has, at a minimum, been recognized by the Supreme Court as potentially sufficient to defeat the common law presumption [in favor of disclosure].”). The Second Circuit has accordingly instructed that countervailing factors to be balanced against the presumption of access to judicial documents include “the privacy interests of those resisting disclosure.” *Amodeo v. Meyer*, 71 F.3d 1044, 1050 (2d Cir. 1995). In determining the weight to be accorded a litigant’s privacy interests, courts should consider the degree to which the subject matter is traditionally considered private rather than public and weigh the “nature and degree of injury” which entails “consideration not only of the sensitivity of the information and the subject but also of how the person seeking access intends to use the information. Commercial competitors seeking an advantage over rivals need not be indulged in the name of monitoring the courts, and personal vendettas similarly need not be aided.” *Id.* at 1051. Thus, Cablevision’s demonstrated intent to pursue a media strategy in litigating this action and to make public what is confidential and competitively sensitive to further such strategy (*see* Denson Affidavit, Exhibit C), “need not be indulged . . . [or] aided” by the Court, as the Second Circuit has held.

Cases construing Rule 26(c)(1) make clear that competitively sensitive business information—such as the proprietary business terms at issue in the License Agreement—generally need not be disclosed. *See, e.g., Vesta Corset Co. v. Carmen Founds., Inc.*, No. 97 CIV. 5139 (WHP), 1999 WL 13257 at *2 (S.D.N.Y. Jan. 13, 1999) (“Pricing and marketing information are widely held to be ‘confidential business information’ that may be subject to a protective order.”); *In re Zyprexa Prods. Liability Litig.*, No. 07 CIV 1310 (JBW), 2007 WL 2340793, at *1 (E.D.N.Y. Aug. 16, 2007) (holding that documents cited within the complaint that may contain trade secrets or confidential commercial information are properly protected

under Rule 26). Whether such information merits protection in any particular case depends on: “1) the extent to which information is known outside the business; 2) the extent to which information is known to those inside the business; 3) the measures taken to guard the secrecy of the information; and 4) the value of the information to the business and its competitors.” *Vesta Corset Co.*, 1999 WL 13257 at *2 (granting motion for protective order limiting disclosure of party’s pricing, profits, costs, overhead, manufacturing specs, customer lists, price structure, and dealings with a common customer). All of these factors support protection of Viacom’s commercially sensitive information here.

Cablevision seeks to disclose, *inter alia*, confidential contractual terms concerning Viacom’s grant of specific programming rights to Cablevision, the associated negotiating history of the agreement, and the distribution and carriage requirements. *See* Exhibit A. This is exactly the type of information that should *not* be disseminated to Viacom’s programming competitors, all of whom are sure to read any unsealed version of the Complaint. *See Sullivan Mktg, Inc. v. Valassis Inc.*, No. 93 CIV 6350 (PKL), 1994 WL 177795, at *2 (S.D.N.Y. May 5, 1994) (finding that knowledge of party’s pricing and marketing plans would give its competitors an unwarranted advantage in the market); *See also, F.T.C. v. Exxon Corp.*, 636 F.2d 1336, 1350 (D.C. Cir. 1980) (recognizing that it is “critical” that a protective order entered in an enforcement proceeding prevent a competitor from obtaining the competitively sensitive information of its counterpart). It is likewise information that should not be disseminated to Viacom’s other customers, which are distributors that vigorously negotiate the terms and conditions of their own License Agreements with Viacom and are not entitled to see the confidential terms negotiated between Viacom and Cablevision so they may use that knowledge in their own negotiations with Viacom.

None of this information resides today in the public domain and Viacom has strenuously safeguarded its rights to keep the terms and conditions of its License Agreements confidential. *See United States v. Hubbard*, 650 F.2d 293, 319 (D.C. Cir. 1980) (“The strength with which a party asserts its interests is a significant indication of the importance of those rights to that party.”) In fact, like Viacom, Cablevision itself in past litigations has requested heightened protection for its License Agreements, recognizing a compelling interest in protecting License Agreement terms from disclosure to competitors and customers. Indeed, in a recent action in which Cablevision was a co-defendant with Viacom facing a similar claim from consumers that programmers and distributors had bundled programming services, the programmer and distributor defendants (including Cablevision) entered into a Memorandum of Understanding as a supplement to the existing Protective Order in that case so that each of their affiliation agreements could be seen only by outside counsel (Exhibit B). Moreover, in another recent action in which Viacom sued Cablevision, the parties agreed to numerous redactions involving the dates, terms, and other non-price conditions of various agreements between them that were far more extensive than the redactions proposed here. *See Denson Affidavit* at ¶ 7.

II. Releasing Viacom’s Confidential Business Terms To The Public Will Cause Significant And Irreparable Harm To Viacom

Courts are “endowed with broad discretion to tailor protective orders to the circumstances of a particular litigation.” *In re Zyprexa Injunction*, 474 F. Supp. 2d 385, 413 (E.D.N.Y. 2007) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)). In particular, courts can and do use this power to prevent “a revelation [that] has the potential to impinge on [a] company’s privacy and property rights and inflict commercial harm.” *Id.* at 421-22.

The value of confidential information is based solely on the fact that it is kept confidential. *See, e.g., In re Iowa Freedom of Information Council*, 724 F.2d 658, 663 (8th Cir.

1983) (noting that trade secrets and other confidential information “are a peculiar kind of property. Their only value consists in their being kept private. If they are disclosed or revealed, they are destroyed.”). The release of confidential business information is presumed to threaten competitive harm and, for this reason, Rule 26(c)(1)(G) specifically lists “a trade secret, or other confidential research, development or commercial information” as information that is appropriately protected from disclosure in civil litigation. *See* Fed. R. Civ. P. 26(c)(1)(G).

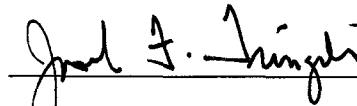
Undue burden and expense is also one of the grounds explicitly listed in Rule 26(c)(1) for which a court may enter a protective order, provided good cause is shown. *See* Fed. R. Civ. P. 26(c)(1) (“the court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”). A protective order sealing confidential portions of a complaint is particularly appropriate when disclosure would cause unfair damage to a litigant’s business interests. *See, e.g., In re Zyprexa Prods. Liability Litig.*, 2007 WL 2340793 at *1 (noting that the filing of a complaint “in which references to [trade secrets or confidential commercial information] are redacted serves the twin purposes of allowing public access to information that affects many individuals . . . and protecting parties from unnecessary disclosure of information which could cause them ‘annoyance, embarrassment, oppression, or undue burden or expense.’”); *Emergency Fuel, LLC v. Pennzoil-Quaker State Co.*, 187 F. Supp. 2d 575, 583 (D. Md. 2002) (granting a motion to seal when “public disclosure could unfairly damage the parties’ business and financial interests”), *rev’d in part on other grounds* 71 Fed. Appx. 826 (Fed. Cir. 2003). Here ample good cause exists, as detailed in the accompanying affidavit of Denise Denson.

CONCLUSION

For the foregoing reasons, Viacom respectfully requests that the Court order that Viacom's proposed redactions of the Complaint be permitted.

Dated: March 5, 2013

Respectfully submitted,

By: 

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EXHIBIT A

REDACTED

EXHIBIT B

Memorandum of Understanding

This Memorandum of Understanding addresses the protocol for handling of affiliation agreements entered between Programmer Defendants and Distributor Defendants (and potentially between Programmer Defendants and other video distributors) that are produced in response to discovery demands in the *Brantley v. NBC/Universal* action pending in the U.S. District Court for the Central District of California.

1. It is understood that producing parties will produce affiliation agreements to which they are parties designating them as “outside counsel only” documents under the negotiated and entered protective order.

2. Certain programmers (and perhaps certain distributors) have indicated a desire for greater levels of protection than required under the protective order with respect to copying and handling of such materials by law firms that are outside counsel to other defendants in the *Brantley* action.

3. Such documents – to be strictly limited to all affiliation agreements between programmer defendants and video distributors (including the distributor defendants) produced in this case – may be produced on a “do not copy” basis, and marked with the notation “Do Not Copy” in addition to appropriate legends under the following conditions:

a. The producing party, at its expense, will produce to any defendant requesting multiple copies of documents up to 6 copies of each document produced in a form and with markings intended to restrict or preclude copying;

b. all documents produced, including all documents marked "Do Not Copy" will be uploaded to the shared production environment, and accessible to all outside counsel working directly on the matter. Password protection, copying restriction, and marking for non-duplication may be arranged to the extent technologically permitted, provided that such actions do not interfere with searching, indexing or analyzing such documents using available electronic tools.

c. Each outside counsel firm for each defendant may, upon request, obtain or make electronic copies of all documents, including those marked "Do Not Copy" for internal electronic storage, provided that the storage environment is secure, access to "Do Not Copy" materials is limited appropriately and within the scope of available technology, the documents are protected from unauthorized access, copying or retransmission to the extent reasonably feasible pursuant to available technology, and the files, or documents themselves, bear an indication that they are not to be duplicated or retransmitted, provided that such protections will not be required if and to the extent they interfere with use and application of standard search, organization and indexing techniques.

4. Nothing in this Memorandum of Understanding will prohibit copying or transmission of excerpts or segments of "Do Not Copy" documents from which the identity of the parties, or the program services involved cannot be ascertained. The distribution and use of such excerpts and segments will be governed by the Protective Order.

5. This Memorandum of Understanding is without prejudice of the right of any party to seek other or additional protection from the Court, or to seek to address misdesignation of documents or information, pursuant to procedures provided for under the applicable protective order in the *Brantley* action.

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17 behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 NBC UNIVERSAL, INC., VIACOM,
21 INC., THE WALT DISNEY COMPANY,
FOX ENTERTAINMENT GROUP, INC.,
22 TURNER BROADCASTING SYSTEM,
INC., TIME WARNER CABLE, INC.,
23 COMCAST CORPORATION, COMCAST
CABLE COMMUNICATIONS, L.L.C.,
24 COXCOM, INC., THE DIRECTV
GROUP, INC., ECHOSTAR SATELLITE
25 L.L.C., CHARTER COMMUNICATIONS,
INC., and CABLEVISION SYSTEMS
26 CORPORATION,

27 Defendants.
28

CASE NO. CV07-06101 CAS (VBKx)
STIPULATION AND [PROPOSED]
PROTECTIVE ORDER

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1 Good cause appearing, and in conformance with the parties' agreement:

2 IT IS HEREBY ORDERED that this Protective Order pursuant to Rule 26(c)
3 of the Federal Rules of Civil Procedure be, and is hereby, entered.

4 1. This Protective Order shall be applicable to and govern all
5 depositions, documents produced in response to requests for production of
6 documents, answers to interrogatories, responses to requests for admission, and all
7 other discovery taken pursuant to the Federal Rules of Civil Procedure, and other
8 information hereafter furnished, directly or indirectly, by or on behalf of any party
9 or nonparty in connection with this action which any party or nonparty (whether or
10 not it furnished the materials or information) designates as "CONFIDENTIAL".
11 The designation of "CONFIDENTIAL" is intended to encompass materials and
12 information of whatsoever nature that the designating party or nonparty in good
13 faith believes comprise or reflect proprietary information used by it in, or
14 pertaining to, its business, which is not generally known and which the party or
15 nonparty would normally not reveal to third parties or would cause third parties to
16 maintain in confidence, including, without limitation, trade secrets, financial data,
17 contracts and agreements, current and future business plans, and marketing
18 documents. A party or nonparty (whether or not it furnished the materials or
19 information) may also designate discovery materials and information provided in
20 this litigation as "CONFIDENTIAL-ATTORNEYS' EYES ONLY" or
21 "CONFIDENTIAL-OUTSIDE COUNSEL EYES ONLY" when that party or
22 nonparty has a good faith belief that such materials and information are
23 particularly competitively sensitive and competitively relevant at the time of
24 production and therefore require a heightened level of protection.¹

25 2. Unless otherwise designated by the producing party, any documents
26 produced in this action that were previously produced in a litigation, investigation

27 ¹ This Protective Order does not apply to hearings before a Magistrate Judge or hearings or trial before the District
28 Court. The parties, any party in interest, and/or the witnesses, can move the Court to seal any court proceeding for
reasons consistent with this Protective Order.

1 or other proceeding shall be treated as "CONFIDENTIAL" if such documents were
2 labeled in that litigation, investigation or other proceeding as "Confidential",
3 "FOIA Confidential Treatment Requested", "Restricted", "Subject to Protective
4 Order", or bear any other designation indicating that their confidentiality should be
5 preserved.

6 3. Materials and information governed by this Protective Order shall be
7 used by any recipients solely for the purpose of conducting this litigation, and not
8 for any other purpose whatsoever, and such information shall not be disclosed to
9 anyone except as provided herein.

10 4. Any information or materials produced by any party or nonparty as
11 part of discovery in this action may be designated by a party or nonparty pursuant
12 to Paragraphs 5 through 8 of this Protective Order.

13 5. The designation of information or materials for purposes of this
14 Protective Order shall be made in the following manner by the party or nonparty
15 seeking protection:

16 A. In the case of documents, exhibits, briefs, memoranda,
17 interrogatory responses, responses to requests for admission, or other materials
18 (apart from depositions or other pretrial or trial testimony): by affixing a plainly
19 visible confidentiality designation legend to: (i) each page containing any
20 confidential information or materials; or (ii) physically on the outside of any media
21 for storing electronic documents, at the time such documents are produced or such
22 information is disclosed, or as soon thereafter as the party or nonparty seeking
23 protection becomes aware of the confidential nature of the information or materials
24 disclosed and sought to be protected hereunder. The term "document," as used in
25 this Order, shall have the broadest meaning permissible under the Federal Rules of
26 Civil Procedure and shall include, without limitation, all "documents and
27 electronically stored information" as defined in Rule 34 of the Federal Rules of
28 Civil Procedure, all "writings," "recordings" and "photographs" as defined in Rule

1 1001 of the Federal Rules of Evidence, and any information stored in or through
2 any computer system or other electronic or optical data storage device.

3 b. In the case of depositions or other pretrial or trial testimony: (i)
4 by a statement on the record, by counsel, during such deposition or other pretrial or
5 trial proceeding that the entire transcript or a portion thereof shall be designated
6 hereunder; or (ii) by written notice of such designation sent by counsel to all
7 parties within five (5) court days after the deposition. (For the elimination of
8 doubt, email notification constitutes written notification under this Protective
9 Order.) The parties shall treat all deposition and other pretrial and trial testimony
10 as "CONFIDENTIAL-OUTSIDE COUNSEL EYES ONLY" under this Order
11 until the expiration of five (5) court days after the deposition. Unless designated as
12 confidential pursuant to this Order, any confidentiality is waived after the
13 expiration of the 5-day period unless otherwise stipulated or ordered. The parties
14 may modify this procedure for any particular deposition or proceeding through
15 agreement on the record at such deposition or proceeding or otherwise by written
16 stipulation, without approval of the Court. If the contents of any document or
17 information designated under this Order is referenced during the course of a
18 deposition, that portion of the deposition record reflecting such confidential
19 information shall also be treated with the same confidential protection as that
20 document or information.

21 c. A party or nonparty furnishing documents and things to parties
22 shall have the option to require that all or batches of documents and things be
23 treated as confidential during inspection and to make its designations of particular
24 documents and things at the time copies of documents and things are produced or
25 furnished.

26 6. Information or materials designated as "CONFIDENTIAL" under this
27 Order, or copies or extracts therefrom and compilations thereof, may be disclosed,
28

1 described, characterized, or otherwise communicated or made available in whole
2 or in part only to the following persons:

3 a. Outside counsel of record in this litigation and staff and
4 supporting personnel of such attorneys, such as paralegals, secretaries,
5 stenographic and clerical employees and contractors, and outside copying, imaging
6 and presentation services, who are working on this litigation under the direction of
7 such attorneys and to whom it is necessary that the materials be disclosed for
8 purposes of this litigation.

9 b. The parties (including party affiliates) and their directors,
10 officers, executives, in-house counsel, employees and representatives, to the extent
11 necessary or appropriate to the prosecution or defense of this litigation.

12 c. Subject to Paragraphs 9 and 10 herein, persons who are
13 expressly retained or sought to be retained by a party or parties as outside
14 consultants or testifying experts, such as economists, statisticians, accountants,
15 industry or technical experts, and the employees or support staff of such
16 consultants or experts; provided that the disclosure of such material to any persons
17 under this subparagraph shall only be to the extent necessary to perform their work
18 in connection with this litigation.

19 d. Subject to Paragraph 10 herein, any other persons who are
20 designated to receive information or materials designated "CONFIDENTIAL" by
21 order of this Court after notice to the parties, or by written stipulation of the
22 designating party or parties.

23 e. Subject to Paragraph 10 herein, any person of whom testimony
24 is taken, or is scheduled to be taken, in this action and whom counsel for the
25 examining or preparing party reasonably believes in good faith to have authored or
26 previously received or reviewed such material in the course of business. In
27 addition, to the extent the information or material purports to describe the conduct
28 or statements of the person, he or she may be shown the particular portion of the

1 information or material purporting to describe his or her conduct or statements, but
2 only that portion and not the remainder of the information or material. Witnesses
3 may review deposition testimony of another witness designated
4 "CONFIDENTIAL" (as well as testimony that is subject to the 5-day period
5 provided for by Paragraph 5(b)), only with respect to matters that directly refer to
6 the witness or describe statements made by or actions taken by such witness. No
7 individual who is shown confidential information or materials or testimony
8 pursuant to this subsection shall be permitted to retain or keep copies of the
9 confidential material or testimony shown under any circumstances.

10 f. The Court and Court personnel.

11 g. Subject to Paragraph 10 herein, court reporters, interpreters, and
12 videographers employed in connection with this action.

13 7. Information or materials designated as "CONFIDENTIAL–
14 ATTORNEYS' EYES ONLY" under this Order, or copies or extracts therefrom
15 and compilations thereof, may be disclosed, described, characterized, or otherwise
16 communicated or made available in whole or in part only to the following persons:

17 a. Outside counsel of record in this litigation and staff and
18 supporting personnel of such attorneys, such as paralegals, secretaries,
19 stenographic and clerical employees and contractors, and outside copying, imaging
20 and presentation services, who are working on this litigation under the direction of
21 such attorneys and to whom it is necessary that the materials be disclosed for
22 purposes of this litigation.

23 b. Designated In-House counsel ("In-House Designees") for the
24 parties herein who are actively involved in the prosecution or defense of this
25 litigation and who do not have responsibility for the negotiation of affiliation
26 agreements or the rendering of legal advice with respect to such negotiations, and
27 supporting personnel of such attorneys. Designations of In-House counsel shall be
28 made in writing at least ten days prior to disclosure of any and all materials under

1 this Protective Order. A party may change its In-House Designee(s) on ten days'
2 prior written notice to all designating parties. Objections to designations shall be
3 made and resolved in the same manner as objections to consultants under
4 Paragraph 9 below.

5 c. Subject to Paragraphs 9 and 10 herein, persons who are
6 expressly retained or sought to be retained by a party or parties as outside
7 consultants or testifying experts, such as economists, statisticians, accountants,
8 industry or technical experts and the employees or support staff of such consultants
9 or experts; provided that the disclosure of "CONFIDENTIAL-ATTORNEYS'
10 EYES ONLY" information or materials to any persons under this subparagraph
11 shall only be to the extent necessary to perform their work on this litigation.

12 d. Subject to Paragraph 10 herein, any other persons who are
13 designated to receive information or materials designated "CONFIDENTIAL-
14 ATTORNEYS' EYES ONLY" by order of this Court after notice to the parties, or
15 by written stipulation of the designating parties.

16 e. Subject to Paragraph 10 herein, any natural person of whom
17 testimony is taken, or is scheduled to be taken, in this action and who authored or
18 previously received the information or materials in the course of business. In
19 addition, to the extent the information or material purports to describe the conduct
20 or statements of the person, he or she may be shown the particular portion of the
21 information or material purporting to describe his or her conduct or statements, but
22 only that portion and not the remainder of the information or material. Similarly,
23 witnesses may review testimony of another witness designated "CONFIDENTIAL
24 -ATTORNEYS' EYES ONLY" (as well as testimony that is subject to the 5-day
25 period provided for by Paragraph 5(b)) to the extent the testimony purports to
26 describe the conduct or statements of the person, but only that portion and not the
27 remainder of the testimony. No individual who is shown confidential information,
28 material or testimony pursuant to this subsection shall be permitted to retain or

1 keep copies of the confidential information, material or testimony shown under any
2 circumstances.

3 f. The Court and Court personnel.

4 g. Subject to Paragraph 10 herein, court reporters, interpreters, and
5 videographers employed in connection with this action.

6 8. Information or materials designated as "CONFIDENTIAL-OUTSIDE
7 COUNSEL EYES ONLY" under this Order, or copies or extracts therefrom and
8 compilations thereof, may be disclosed, described, characterized, or otherwise
9 communicated or made available in whole or in part only to the following persons:

10 a. Outside counsel of record in this litigation who do not have any
11 responsibility for advising any person regarding the negotiation or execution of
12 affiliation agreements and such outside counsel's staff and supporting personnel of
13 such attorneys, such as paralegals, secretaries, stenographic and clerical employees
14 and contractors, and outside copying, imaging and presentation services, who are
15 working on this litigation under the direction of such attorneys and to whom it is
16 necessary that the information or materials be disclosed for purposes of this
17 litigation.

18 b. Subject to Paragraphs 9 and 10 herein, persons who are expressly
19 retained or sought to be retained by a party or parties as outside consultants or
20 testifying experts, such as economists, statisticians, accountants, industry or
21 technical experts and the employees or support staff of such consultants or experts;
22 provided that the disclosure of "CONFIDENTIAL-OUTSIDE COUNSEL EYES
23 ONLY" information or materials to any persons under this subparagraph shall only
24 be to the extent necessary to perform their work on this litigation.

25 c. Subject to Paragraph 10 herein, any other persons who are
26 designated to receive information or materials designated "CONFIDENTIAL-
27 OUTSIDE COUNSEL EYES ONLY" by order of this Court after notice to the
28 parties, or by written stipulation of the designating parties.

1 d. Subject to Paragraph 10 herein, any natural person of whom
2 testimony is taken, or is scheduled to be taken, in this action and who authored or
3 previously received the information or materials in the course of business. In
4 addition, to the extent the information or material purports to describe the conduct
5 or statements of the person, he or she may be shown the particular portion of the
6 information or material purporting to describe his or her conduct or statements, but
7 only that portion and not the remainder of the information or material. Similarly,
8 witnesses may review testimony of another witness designated "CONFIDENTIAL
9 –OUTSIDE COUNSEL EYES ONLY" (as well as testimony that is subject to the
10 5-day period provided for by Paragraph 5(b)) to the extent the testimony purports
11 to describe the conduct or statements of the person, but only that portion and not
12 the remainder of the testimony. No individual who is shown confidential
13 information, material or testimony pursuant to this subsection shall be permitted to
14 retain or keep copies of the confidential information, material or testimony shown
15 under any circumstances.

16 e. The Court and Court personnel.

17 f. Subject to Paragraph 10 herein, court reporters, interpreters and
18 videographers employed in connection with this action.

19 9. For the purposes of this Order, an outside consultant or expert shall be
20 restricted to a person who is retained or employed as a bona fide consultant or
21 expert for purposes of this litigation, whether full or part time, by or at the
22 direction of counsel for a party. The outside consultant shall be a person who does
23 not currently have any responsibility for negotiating or advising any person with
24 respect to the negotiation of affiliation agreements, has no present intention of
25 having any responsibility for negotiating or advising any person with respect to the
26 negotiation of affiliation agreements, and will not negotiate or advise any person
27 with respect to the negotiation of affiliation agreements for a period of two years
28 following the initial conclusion of this action in the district court. Before

1 disclosing any of the material, documents or information covered by this Order to
2 any such outside consultant or expert, counsel for plaintiffs shall inquire of each
3 outside consultant or expert so retained or employed to insure that he or she meets
4 the requirements and is willing to commit to the obligations set forth herein, and
5 obtain confirmation of such from each outside consultant or expert in writing.
6 Plaintiffs' counsel shall then advise defense counsel that each plaintiffs' outside
7 consultant or expert has confirmed that he or she meets the requirements and has
8 committed to the obligations set forth herein.

9 10. Each person set forth in Paragraphs 6, 7, 8 and 9 who is not (i) outside
10 counsel for a party (or staff or supporting personnel of outside counsel for a party,
11 as defined in subparagraphs 6(a), 7(a), and 8(a)); (ii) inside counsel for a party
12 (pursuant to subparagraph 6(b) or 7(b)), or staff or supporting personnel of such
13 inside counsel; or (iii) the Court or Court personnel to whom information or
14 materials designated under this Order are to be disclosed, shall, prior to receiving
15 such information or materials, be furnished with a copy of this Protective Order
16 and a copy of the Non-Disclosure Agreement attached hereto as Exhibit A, which
17 the person shall read and sign. Counsel for the party seeking to disclose material
18 designated under this Order to any such person pursuant to this paragraph shall be
19 responsible for retaining the executed originals of all such Non-Disclosure
20 Agreements. Copies of any such Non-Disclosure Agreements (except for those
21 signed by non-testifying experts or outside consultants who need not be disclosed
22 under Rule 26) shall be provided to counsel for the designating parties or
23 nonparties upon request at any point after both plaintiffs' and defendants' experts
24 have been disclosed in accordance with Rule 26. Counsel shall retain copies of
25 Non-Disclosure Agreements signed by all experts and outside consultants they
26 have retained, including non-testifying experts or consultants, for a period of two
27 years following the initial conclusion of this action in the district court.

1 11. All information and material designated under this Order shall be kept
2 in secure facilities in a manner intended to preserve confidentiality. Access to
3 those facilities shall be permitted only to those persons set forth in Paragraphs 6, 7
4 and 8 above as persons properly having access thereto. The recipient of any
5 information or materials designated under this Order shall use its best efforts, but
6 at no time less than reasonable efforts under the circumstances, to maintain the
7 confidentiality of such information or materials.

8 12. Nothing contained in this Order shall affect the right of any party to
9 make any objection, claim any privilege, or otherwise contest any request for
10 production of documents, interrogatory, request for admission, subpoena, or
11 question at a deposition or to seek further relief or protective order from the Court
12 as permitted by the Federal Rules of Civil Procedure. Nothing in this Order shall
13 affect any right of any party to redact information or materials for privilege or
14 relevancy. Nothing in this Order shall constitute an admission or waiver of any
15 claim or defense by any party.

16 13. In the event that any information or material designated under this
17 Order is used, described, characterized, excerpted, or referenced in, or attached to,
18 any court proceeding or submission in connection with this litigation: (i) it shall
19 not lose its confidential status through such use; (ii) the parties shall take all steps
20 reasonably required to protect its confidentiality during such proceedings; and (iii)
21 the party shall file such material under seal, except that upon the default of the
22 filing party to so designate, any party may do so. Envelopes used to seal such
23 material shall carry the notation: "SUBJECT TO PROTECTIVE ORDER-FILED
24 UNDER SEAL" and shall comply with all requirements of the Court for filing
25 material under seal. If the material in the envelope contains information or
26 materials that have been designated "outside counsel eyes only" under Paragraph 8
27 of this order, then the sealed envelope shall also be stamped with the notation
28 "CONFIDENTIAL-OUTSIDE COUNSEL EYES ONLY." Envelopes so marked

1 shall be delivered sealed to the Clerk of the Court and the contents thereof shall not
2 be made available for public inspection. Counsel for the designating party shall
3 have the opportunity to oppose any request for public inspection.

4 14. Any information and material produced by nonparties, pursuant to
5 subpoena or otherwise, may be designated pursuant to the terms of this Order by
6 any party or nonparty. Where two or more parties or nonparties each designate
7 different copies of the same information or material with differing confidentiality
8 designations, the higher (i.e., more protective) designation shall control the
9 protection the information or material receives under this Order. Parties are also
10 free to designate, under any level of confidentiality provided for in this order,
11 discovery information or material produced by other parties or non-parties that
12 contain confidential information of the designating party.

13 15. A party shall not be obligated to challenge the propriety of the
14 confidentiality designation of any material under this Order at the time the
15 designation is made, and failure to do so shall not preclude a subsequent challenge
16 thereto. In the event that any party to this litigation disagrees at any point in these
17 proceedings with a particular confidentiality designation, such party shall provide
18 to the designating party or nonparty a letter stating its objection to the designation
19 and basis of that objection. The designating person or entity shall respond by letter
20 within five (5) court days to such letter. If the dispute between the parties is not
21 resolved, the objecting party shall, within five (5) court days of the designating
22 person or entity's letter response (or the lapse of the time period for such response)
23 send to the designating person or entity by facsimile or next business day delivery
24 its portion of a joint discovery dispute letter. Within five (5) court days of receipt
25 of such portion of the joint letter, the designating person or entity shall send its
26 portion of the joint letter to the objecting party by fax or next business day
27 delivery. Within two (2) court days of receipt of both portions of the joint letter,
28 the objecting party shall submit the joint letter to the Court and a hearing shall be

1 scheduled at the Court's earliest convenience. The burden of proving that
2 information or material has been properly designated under this Order is on the
3 person or entity designating the information or material under this Order.

4 16. Parties and nonparties may seek a higher level of protection than the
5 highest levels of confidentiality provided for in this Order, for information or
6 materials deemed to be extraordinarily sensitive, by providing notice to all parties
7 in the action that such higher level of protection is deemed necessary by the
8 designating party. If any party objects to the designation, the party seeking greater
9 protection must seek leave of the Court for an order allowing the party to designate
10 the material in the manner that the party claims is necessary.

11 17. Nothing in this Order shall preclude any party to the lawsuit or its
12 counsel: (a) from showing information or materials designated under this Order to
13 an individual who either prepared or reviewed the document prior to the filing of
14 this action; or (b) from disclosing or using, in any manner or for any purpose, any
15 information or materials from the party's own files which the party itself has
16 designated under this Order.

17 18. Nothing in this Order shall prevent disclosure beyond the terms of this
18 Order if the party that designated the materials or information consents in writing
19 to such disclosure, or if a court orders such disclosure. A party requested to
20 disclose information or materials designated under this Order to a nonparty
21 pursuant to a subpoena, civil investigative demand, discovery procedure permitted
22 under the Federal Rules of Civil Procedure, or other formal discovery request shall
23 object to its production to the extent permitted by applicable law and notify the
24 requesting nonparty of the existence of this Order and that the information or
25 materials requested by the nonparty has been designated under this Order, and shall
26 further give notice of such request, by facsimile and next business day delivery,
27 upon the party which designated the information or materials as soon as is
28

1 reasonably possible, but in all instances reasonably prior to the date on which such
2 material designated under this Order is requested to be produced to the nonparty.

3 19. If a party inadvertently fails to designate information or materials,
4 when producing or otherwise disclosing such information or materials, it shall not
5 be deemed a waiver in whole or in part of a party's claim of confidentiality, either
6 as to the specific information or materials disclosed, or as to any other information
7 or materials relating thereto or on the same or related subject matter. As soon as
8 the receiving party is informed by the producing or designating party that it is
9 designating previously produced information or materials as "CONFIDENTIAL",
10 "CONFIDENTIAL-ATTORNEYS' EYES ONLY", or "CONFIDENTIAL-
11 OUTSIDE COUNSEL EYES ONLY", the information must be treated as if it had
12 been timely designated under this Protective Order, and the receiving party must
13 endeavor in good faith to obtain all copies of the information or materials that it
14 distributed or disclosed to persons not authorized to access such information or
15 materials by Paragraphs 6, 7 or 8 above, as well as any copies made by such
16 persons.

17 20. All counsel for the parties who have access to information or material
18 designated under this Order acknowledge they are bound by this Order and submit
19 to the jurisdiction of this Court for purposes of enforcing this Order.

20 21. Entering into, agreeing to, and/or producing or receiving information
21 or material designated under this Order, or otherwise complying with the terms of
22 this Order shall not:

23 a. operate as an admission by any party that any particular
24 information or material designated under this Order contains or reflects trade
25 secrets, proprietary or commercially sensitive information, or any other type of
26 confidential information;

1 b. operate as an admission by any party that the restrictions and
2 procedures set forth herein constitute or do not constitute adequate protection for
3 any particular information or materials designated under this Order;

4 c. prejudice in any way the rights of any party to object to the
5 production of information or materials they consider not subject to discovery;

6 d. prejudice in any way the rights of any party to object to the
7 authenticity or admissibility into evidence of any document, testimony or other
8 evidence subject to this Order;

9 e. prejudice in any way the rights of any party to seek a
10 determination by the Court whether any information or material should be subject
11 to the terms of this Order;

12 f. prejudice in any way the rights of any party to petition the
13 Court for a further protective order relating to any purportedly confidential
14 information or materials; or

15 g. prevent the parties to this Order from agreeing in writing or on
16 the record during a deposition or hearing in this action to alter or waive the
17 provisions or protections provided for herein with respect to any particular
18 information or material with written or on the record consent of the party or
19 nonparty designating such information or materials.

20 22. This Order shall not be construed to apply to any information or
21 materials that: (a) are available to the public other than through a breach of this
22 Order or other duty of confidentiality; (b) a receiving party can demonstrate was
23 already known to the receiving party at the time of disclosure and were not subject
24 to conditions of confidentiality; or (c) a receiving party can demonstrate were
25 developed by that receiving party independently of any disclosure by a designating
26 party or nonparty.

27 23. In the event that a request for disclosure of information or materials in
28 the possession or control of a person or entity involves the confidentiality rights of

1 a nonparty or disclosure of the information or materials would violate a protective
2 order issued in another action, the party with possession or control of the
3 information or materials will promptly attempt to obtain the consent of the
4 nonparty to disclose the information or materials under this Order. If the consent
5 of the nonparty is refused or otherwise cannot be obtained, the party will promptly
6 thereafter notify the party seeking discovery by the written response due date for
7 such discovery of: (a) the existence and description (to the extent disclosable) of
8 the information without producing such information or materials; and (b) the
9 identity of the nonparty (provided, however, that such disclosure of the identity of
10 the nonparty does not violate any confidentiality obligations). The party seeking
11 discovery may then make further application to the nonparty or seek an order
12 compelling discovery.

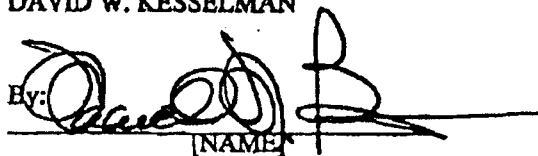
13 24. Within sixty (60) days after the final termination of litigation between
14 the parties, all information or materials designated under this Order and all copies
15 thereof (including summaries and excerpts) shall be either returned to the party that
16 produced it or destroyed and a certification of destruction supplied to the
17 producing party; provided, however, that for each party, counsel who is entitled
18 access to such designated information or materials under Paragraphs 6, 7 or 8 may
19 retain one complete and unredacted set of its work product that contains designated
20 information or materials as well as pleadings and papers filed with the Court or
21 served on the other party solely for reference in the event of, and only in the event
22 of, further proceedings or litigation between the parties to this action, a dispute
23 over such counsel's performance, or a dispute over the use or dissemination of
24 information or materials designated under this Order. Such retained copy of
25 pleadings and papers shall be maintained in a file accessible only by properly
26 authorized counsel and their staff under the provisions of, and bound by, this
27 Order. This Order shall survive the final termination of this litigation with respect
28 to any such retained confidential information or materials.

1 25. If information or materials subject to a claim of attorney-client
2 privilege, attorney work product, or any other legal privilege protecting
3 information from discovery is inadvertently produced to a party or parties, such
4 production shall in no way prejudice or otherwise constitute a waiver of, or
5 estoppel as to, any claim of privilege, work product or other ground for
6 withholding production to which the producing party or other person would
7 otherwise be entitled. In the event information or materials subject to a claim of
8 attorney-client privilege, attorney work product or any other legal privilege
9 protecting information from discovery is inadvertently produced, upon request of
10 the producing party, the documents, together with all copies thereof shall promptly
11 (and no later than ten (10) days after receipt of such request) be returned forthwith
12 to the party claiming privilege and/or attorney work product protection without the
13 need to show the production was inadvertent. The returning party shall also
14 destroy any notes made from the inadvertently produced information or materials
15 and certify in writing that they have been destroyed. Nothing in this paragraph
16 shall prejudice any right of any party to seek discovery of communications,
17 documents, and things as to which a claim of privilege has been made.

1 STIPULATED TO AND AGREED
2

3 Dated: *Dec. 10*, 2008
4

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
DAVID W. KESSELMAN

5
6 By: 
7 [NAME]

8 Attorneys for Plaintiffs

9 Dated: _____, 2008
10

ARNOLD & PORTER LLP
RONALD C. REDCAY
JOHN D. LOMBARDO

11
12 By:
13 _____

[NAME]

14 Attorneys for Defendant
NBC UNIVERSAL

15
16 Dated: _____, 2008
17

SIMPSON THACHER & BARTLETT
LLP
KENNETH R. LOGAN
JOSEPH F. TRINGALI (pro hac vice)
CHET A. KRONENBERG

18
19
20 By: 
21 [NAME]

22 Attorneys for Defendant
VIACOM, INC.
23
24
25
26
27
28

1 STIPULATED TO AND AGREED

2
3 Dated: __, 2008

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
DAVID W. KESSELMAN

6 By:

7 _____
[NAME]

8
9 Attorneys for Plaintiffs

10 Dated: December 12, 2008.

ARNOLD & PORTER LLP
RONALD C. REDCAY
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12
13 By:

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15 Attorneys for Defendant
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22 Attorneys for Defendant
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1 Dated: December 11, 2008

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13 _____
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14 _____
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16 Attorneys for Defendants
17 TURNER BROADCASTING SYSTEM,
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18 TIME WARNER CABLE INC.

19 Dated: _____, 2008

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24 Attorneys for Defendant
25 FOX ENTERTAINMENT GROUP, INC.

1 Dated: , 2008

2 WILMER CUTLER PICKERING HALE
3 and DORR LLP
4 A. DOUGLAS MELAMED (*pro hac vice*)
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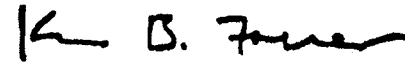
9 Attorneys for Defendant
10 THE WALT DISNEY COMPANY

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12 CRAVATH, SWAINE & MOORE LLP
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22 TURNER BROADCASTING SYSTEM,
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2
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15 Dated: 12/11, 2008

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1 Dated: 12/15/2008

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[NAME]

Attorneys for Defendant
ECHOSTAR SATELLITE, LLC

2
3
4
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6
7
8 Dated: _____, 2008

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DAVID DUNN (*pro hac vice*)

By: _____

[NAME]

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13
14
15 Dated: _____, 2008

SULLIVAN & CROMWELL LLP
ROBERT A. SACKS
DIANE L. MCGIMSEY

By: _____

[NAME]

Attorneys for Defendant
CABLEVISION SYSTEMS
CORPORATION

22
23 IT IS SO ORDERED:

24
25 DATED: _____

Hon. Christina A. Snyder

1 Dated: __, 2008

COBLENTZ, PATCH, DUFFY & BASS
LLP
RICHARD R. PATCH
SUSAN K. JAMISON
LAUREN S. KOWAL

By:

[NAME]

Attorneys for Defendant
ECHOSTAR SATELLITE, LLC

8 Dated: Dec 15, 2008

HOGAN & HARTSON, LLP
DAVID R. SINGER
DAVID DUNN (*pro hac vice*)

By:

[NAME]

DAVID DUNN

Attorneys for Defendant
CHARTER COMMUNICATIONS, INC.

15 Dated: December 12, 2008

SULLIVAN & CROMWELL LLP
ROBERT A. SACKS
DIANE L. MCGIMSEY

By:

[NAME]

Robert Sacks
Attorneys for Defendant
CABLEVISION SYSTEMS
CORPORATION

23 IT IS SO ORDERED:

25 DATED: _____

Hon. Christina A. Snyder

EXHIBIT A

NON-DISCLOSURE AGREEMENT

I, _____, do solemnly swear that I have read and am fully familiar with the terms of the Stipulation and Protective Order regarding confidentiality of discovery documents and information entered in Brantley, et al. v. NBC Universal, Inc., et al., Case No. CV07-06101 CAS (VBKx) in the United States District Court for the Central District of California. I hereby agree to comply with and be bound by the terms and conditions of that Protective Order unless and until modified by further Order of that Court. I hereby consent to the jurisdiction of that Court for the purposes of enforcing that Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this ____ day of _____, 200__, at _____.

Signed: _____

Address: _____

