

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AT&T INC., DIRECTV GROUP
HOLDINGS, LLC, and
TIME WARNER INC.,

Defendants.

Case No. 1:17-cv-02511-RJL

**RESPONSE TO THIRD-PARTY TWENTY-FIRST CENTURY FOX, INC.’S
MOTION TO AMEND THE PROTECTIVE ORDER**

Plaintiff United States of America respectfully submits this response to the motion by third-party Twenty-First Century Fox (“Fox”) to amend the protective order. Fox is seeking three additional protections for the confidential information that it provided to the United States during the investigation of the Defendants’ proposed merger: (1) permitting Fox to withhold or redact sensitive material that was provided to the United States as part of its investigation; (2) requiring Defendants to provide Fox with a list of individuals that would review its confidential information and permitting Fox an opportunity to object to disclosure to those individuals; and (3) providing for a “cooling off” period for individuals who review Fox’s sensitive information. The United States opposes Fox’s first request but takes no position on the second and third requests.

First, Fox has asked that it be permitted to withhold from production “highly competitively sensitive material that is not necessary or relevant for this litigation,” or that it be allowed to redact certain terms prior to their production. Fox Mot. at 2–3. In crafting a protective

order, the Court must “strike a balance between [the Defendants’] ability to prepare and present [their] defense and the interests of third parties in avoiding the inadvertent use or disclosure of their confidential information.” *FTC v. Sysco Corp.*, 83 F. Supp. 3d 1, 4 (D.D.C. 2015). With respect to the concerns that Fox has articulated here, the protective order as currently drafted strikes the appropriate balance. Determining which of Fox’s materials are not “necessary or relevant,” and potentially going through and redacting such information, would be time-consuming and burdensome. Indeed, at this stage it is likely impossible to determine what documents may become necessary or relevant during the course of the litigation. Even more time-consuming and burdensome would be determining which materials produced by other third parties contain information for which Fox might claim concerns over confidentiality. Such procedures are both unnecessary and impractical.

Second, Fox has asked the Defendants to provide it with “a list of the specific names and affiliations of the individuals that would have access to Fox’s confidential information” and that it be given an opportunity to object to any specific individual. The United States takes no position on this request.

Third, Fox is seeking that any individual given access to its confidential information should be required to observe a two-year “cooling off” period during which they cannot be involved in matters involving Fox. The United States takes no position on this request as well.

Dated: December 20, 2017

Respectfully submitted,

/s/ Craig Conrath

Craig Conrath

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2017, I caused a true and correct copy of the foregoing document to be served upon the parties of record via the Court's CM/ECF system.

/s/ Craig Conrath

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