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October 24, 2017

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication in GN Docket No. 16-142

Dear Ms. Dortch:

On October 23, 2017, Chip McDonald of ACA Member Cable ONE, Michael Nilsson of Harris, Wiltshire & Grannis LLP, and I met on behalf of the American Cable Association with Media Bureau and Office of Engineering and Technology staff to discuss a variety of issues related to the proposed transition to ATSC 3.0. Present on behalf of the Commission were the following: Michelle Carey, Martha Heller, Brendan Murray, Steven Broeckert, Evan Baranoff, John Gabrysch, Mark Colombo, Martin Doczkat, and Nancy Murphy (the latter three by telephone). We discussed the following issues, each of which we discussed at more length in our prior submissions¹ or those of the American Television Alliance, of which ACA is a member.²

1. Material Degradation.

In other contexts, broadcasters have argued that MVPDs and broadcasters cannot lawfully agree in retransmission consent agreements to carriage of signals in a format less robust than that transmitted over the air.³ We continue to think this position is erroneous as a matter of

¹ Comments of the American Cable Association (filed May 9, 2017) (“ACA Comments”). Unless otherwise indicated, each document referenced in this letter was filed in GN Docket No. 16-142.

² Comments of the American Television Alliance (filed May 9, 2017) (“ATVA Comments”).

³ ACA Comments at 14. *See, e.g.*, Comments of the National Association of Broadcasters at 5 n.14, CS Docket No. 98-120 (filed Apr. 16, 2015) (citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 2965, 3004 ¶ 171

law.⁴ In the ATSC 3.0 context, NAB’s position would be especially harmful. Indeed, on its face it would appear to prohibit altogether the “downconversion” of ATSC 3.0 formats into formats compatible with existing cable equipment. If, for example, a station transmits in ATSC 3.0 and its ATSC 1.0 simulcast fails to reach a small cable operator’s headend, the small cable operator would have to downconvert the ATSC 3.0 signal if it wished to offer the station to subscribers with existing equipment. NAB’s prior advocacy would suggest that broadcasters and small cable operators could not agree to such an arrangement.

We cannot believe this is what NAB actually intends. If it did, there would be no reason for the relevant ATSC study group—the TG3/S37 “Specialist Group on Conversion and Redistribution of ATSC 3.0 Service”—to choose as its first task the promulgation of standards for ATSC 3.0 downconversion. To avoid any confusion, however, the Commission should confirm that parties can agree to carry ATSC 3.0 signals in formats other than those transmitted over the air—including less robust formats compatible with existing cable equipment.

2. Flash Cuts.

We continue to believe that the Commission should not permit flash-cuts—or should do so only sparingly.⁵ To the extent the Commission considers allowing flash-cuts at all—whether by rule or by waiver—it should at a minimum *not* permit flash cuts to ATSC 3.0 only until professional-grade equipment that would permit MVPDs to receive, downconvert, and deliver such signals in a viewable format to their customers becomes commercially available. Absent such a rule, MVPD subscribers, respectively, would lose access to the signals of a flash-cutting station.⁶ With respect to MVPD subscribers, we note again that that TG3/S37 has yet to complete its first task, related to downconversion of ATSC 3.0 signals, and is not expected to do so until 2018.

(1993)) (arguing that Section 614’s prohibition on “material degradation” applies “to all local commercial television stations carried by a cable system, and not just to must-carry stations”).

⁴ NAB’s argument ignores (among other things) another statutory provision, Section 325(b)(4), which provides that, for a station electing retransmission consent, “the provisions of [Section 614] shall not apply to the carriage of the signal of such station by such cable system.” 47 U.S.C. § 325(b)(4). *See* Reply Comments of the American Cable Association at 10-11 n.33, CS Docket No. 98-120 (filed Apr. 27, 2015) (discussing additional authority).

⁵ ATVA Comments at 44-45; Letter from Michael Nilsson to Marlene Dortch (filed Sept. 29, 2017) (describing MVPD carriage of low-power and Class A stations).

⁶ Similar concerns apply to off-air viewers if the Commission permits flash cuts before ATSC 3.0-compliant televisions or retail ATSC 3.0-to-ATSC 1.0 converter boxes become readily available.

3. Provisions Applicable to Small Cable Operators.

ACA continues to support ATVA's proposal to require separate negotiation for first-time carriage of ATSC 3.0 signals.⁷ We have also suggested, however, that if the Commission chose not to impose such a requirement for all MVPDs, it should do so for small MVPDs, which are uniquely susceptible to broadcast coercion.⁸ Alternatively, or in addition, the Commission should prohibit broadcasters from demanding carriage from an MVPD in format that the MVPD does not yet carry.⁹ Our comments refer to numerous instances in which the Commission has granted relief to small¹⁰ and capacity-constrained providers.¹¹ It has more than sufficient authority to do so here under the broad statutory provisions that permit it to adopt a broadcast format in the first place.¹²

4. Carriage Issues.

We continue to believe that any licensing regime for ATSC 3.0 signals should not change the area in which any station is "significantly viewed"¹³ or in which it can assert syndicated exclusivity or network nonduplication protection.¹⁴

5. Patents.

We continue to believe that the Commission should require RAND pricing not only for the physical-layer ATSC 3.0 standards that broadcasters seek to incorporate, but for all patents essential to use those standards. These should specifically include the H.265 encoding standard—one for which we have found no evidence of RAND commitments.¹⁵

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⁷ ACA Comments at 10; ATVA Comments at 25.

⁸ ACA Comments at 10.

⁹ *Id.* at 18.

¹⁰ *Id.* at 4, n.11.

¹¹ *Id.* at 17.

¹² See Letter from Michael Nilsson to Marlene Dortch (filed Aug. 21, 2017) (discussing legal authority to adopt and condition ATSC 3.0 requirements).

¹³ ATVA Comments at 41.

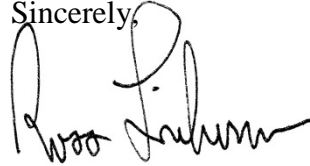
¹⁴ *Id.* at 43.

¹⁵ *Id.* at 48.

Marlene H. Dortch
October 24, 2017
Page 4

In accordance with the Commission's rules, I will file a copy of this letter electronically in the docket listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross J. Lieberman", with a stylized, cursive script.

Ross J. Lieberman

cc (*via email*): meeting attendees