The Internet & Television Association
25 Massachusetts Avenue, NW | Suite 100
Washington, DC 20001
(202) 222-2300

Steve Morris
Vice President &
Associate General Counsel
o (202) 222-2454 e smorris@ncta.com

September 20, 2018

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation

Wireless Infrastructure, WT Docket No. 17-79
Wireline Infrastructure, WC Docket No. 17-84
Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, MB Docket No. 05-311

Dear Ms. Dortch:

On September 18, 2018, Christianna Barnhart from Charter Communications, Inc.; David Don from Comcast Corporation; Barry Ohlson from Cox Enterprises, Inc.; Howard Symons of Jenner & Block LLP; and the undersigned (the "cable parties") met with Michael Carowitz of Chairman Pai's office; Erin McGrath of Commissioner O'Rielly's office; Umair Javed of Commissioner Rosenworcel's office; and Will Adams of Commissioner Carr's office regarding the above-captioned proceedings.

At the meetings, the cable parties made three points. First, they noted that the legal analysis of Section 253 in the *Wireless Infrastructure Draft Ruling* is applicable to any "commingled" facilities that are capable of providing telecommunications services,[1] including many cable systems.[2] We urged the Commission to make that point explicitly.[3] In particular,

[1] *Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC-CIRC1809-02, ¶ 35 (drft. Sept. 5, 2018) ("*Wireless Infrastructure Draft Ruling*").

[2] *See* Letter from Rick Chessen, NCTA, to Marlene H. Dortch, WC Docket No. 17-84 (filed June 11, 2018), at 12 & n.39 ("*NCTA June 11 Ex Parte*").

[3] Other parties have noted that the Section 253 analysis in the *Wireless Infrastructure Draft Ruling* "governs with equal force in the context of all kinds of network facilities and technologies." *See* Letter from Michael Romano, Senior Vice President – Industry Affairs and Business Development, NTCA-The Rural Broadband Association, to

we noted that duplicate authorizations and excessive fees in addition to cable's franchise and franchise fee obligations represent an undue burden on the ability of cable operators to provide telecommunications services and so are preempted by Section 253.[4] NCTA has previously documented these burdens.[5]

Second, the cable parties proposed clarifying that strand-mounted microwireless facilities should be excluded from the definition of "antenna" in the shot clock rules proposed in the *Wireless Infrastructure Draft Ruling*.[6] The cable parties explained that the placement and construction of these facilities are generally not subject to prior approval. The cable parties noted that all but one of the recently-enacted state small cell bills exclude microwireless facilities for this reason.[7] They also pointed out that the exclusion of Part 15 devices already in the draft covers some but not all microwireless facilities, and suggested that the exclusion should not be tied to whether the device uses licensed or unlicensed spectrum.[8]

Finally, the cable parties discussed the draft *Second Further Notice of Proposed Rulemaking* ("*FNPRM*") addressing the issues arising out of the 6th Circuit's remand in *Montgomery County, Maryland v. FCC, et al*.[9] They explained that franchising authorities continue to seek to regulate both non-cable services offered over franchised cable systems and the facilities and equipment used to offer those services. Franchising authorities also seek fees that exceed five percent of gross cable revenues, as well as substantial in-kind contributions. These issues arise at both the state and local levels. The cable parties asked that the *FNPRM* seek further comment on the applicable scope of the proposed rules.

Marlene H. Dortch, WT Docket No. 17-79; WC Docket No. 17-84 (filed Sept. 12, 2018), at 2; *see also* Letter from Ted Heckmann, Senior Director, Regulatory & Government Affairs, Cincinnati Bell, Inc., WT Docket No. 17-79; WC Docket No. 17-84 (filed Sept. 17, 2018).

[4] *Cf. Wireless Infrastructure Draft Ruling*, ¶¶ 41-42 (citing with approval judicial decisions holding that a 5 percent gross revenue fee for rights-of-way access "can run afoul of" Section 253).

[5] *See NCTA June 11 Ex Parte*, at 3-9; Comments of NCTA, WT Docket No. 17-79; WC Docket No. 17-84 (filed June 15, 2017), at 22-32.

[6] *See* proposed 47 C.F.R. **§** 1.16002(b).

[7] *See* Letter from Steve Morris, NCTA, to Marlene H. Dortch, WT Docket No. 17-79; WC Docket No. 17-84; WT Docket No. 16-421 (filed Aug. 20, 2018).

[8] Consistent with the state laws described above, the cable parties proposed that "microwireless facility" be defined as a small wireless facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length. This is also the same definition in the Broadband Deployment Advisory Committee's ("BDAC") State Model Code. *See* BDAC, *State Model Code for Accelerating Broadband Infrastructure Deployment and Investment* (7/19/18 Draft), Art. 2, ¶ 40, available at https://www.fcc.gov/sites/default/files/bdac-07-2627-2018-harmonization-wg-model-code-states.pdf.

[9] Mr. Symons did not participate in the meetings with respect to the discussion of MB Docket No. 05-311.

Please direct any questions regarding the foregoing to the undersigned.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: Michael Carowitz
Erin McGrath
Will Adams
Umair Javed