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November 8, 2018

VIA ECFS

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

Re: Ex Parte Communication of the American Cable Association; Electronic Delivery of MVPD Communications, MB Docket No. 17-317; Modernization of Media Regulation Initiative, MB Docket No. 17-105

Dear Ms. Dortch:

On November 7, 2018, I spoke separately via telephone with Erin McGrath, Legal Advisor to Commissioner O’Rielly, Evan Swarztrauber, Policy Advisor to Commissioner Carr, and Lyle Elder of the Media Bureau regarding the draft Report and Order in the above-referenced dockets that was released on October 25, 2018.¹ I also spoke with Alison Nemeth, Media Advisor to Chairman Pai, during a separate call on November 8, 2018.

During the calls, I expressed the American Cable Association’s (“ACA”) support of the item, which will permit cable operators to send all required subscriber notices via e-mail, subject to certain consumer safeguards, and to respond to certain consumer requests and billing dispute complaints by e-mail if the consumer used e-mail to make the request or complaint, or if the consumer specifies e-mail as the preferred delivery method in the request or complaint. The item also eliminates certain outdated rules which require cable operators to provide notice to subscribers regarding cable equipment compatibility issues that are no longer relevant to today’s consumers.

ACA has long advocated in favor of allowing cable operators greater flexibility to communicate with their subscribers via electronic methods,² and the record in this proceeding reflects widespread consensus regarding the many benefits of electronic communications. These benefits include the

¹ *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket Nos. 17-317 and 17-105, Circulation Draft Report and Order, FCC-CIRC1811-10 (rel. Oct. 25, 2018) (“Draft Report and Order”).

² See, e.g., *National Cable & Telecommunications Association and American Cable Association*, Petition of National Cable & Telecommunications Association and American Cable Association for Declaratory Relief, MB Docket No. 16-216 (filed March 7, 2016) (“NCTA/ACA Petition”).

“positive environmental aspects of saving substantial amounts of paper annually, increased efficiency, and enabling customers to more readily access accurate information regarding their service options.”³ Most importantly for ACA members, allowing for greater electronic communications will “greatly ease the burden of complying with [subscriber notice requirements] for all cable operators, including in particular small cable operators[,]” and will “afford small and medium independent operators, many of which have very limited resources, greater flexibility to match the electronic operations of their online and other competitors.”⁴

As ACA stated in its comments, “permitting cable operators to transition to electronic delivery of notices should not increase the odds of customers not receiving notices, or result in customers’ losing their right to continue receiving notices via U.S. mail.”⁵ ACA believes that the consumer safeguards described in the draft Report and Order – specifically the definition of “verified e-mail”⁶ and the requirement that cable operators “include an opt-out telephone number that is clearly and prominently presented to customers in the body of the originating e-mail that delivers the notices, so that it is readily identifiable as an opt-out option”⁷ – are more than sufficient to ensure that all subscribers receive their notices in the manner that they prefer.⁸

For these reasons, ACA supports the Commission’s proposals to update its rules related to subscriber communications, and urges the Commission to adopt the draft Report and Order.

³ *National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Red 5269, ¶ 6 (2017) (“2017 Declaratory Ruling”).

⁴ *Id.*, ¶ 8, quoting NCTA/ACA Petition at 3.

⁵ *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket Nos. 17-317 and 17-105, Comments of the American Cable Association at 5 (filed Feb. 15, 2018).

⁶ Draft Report and Order, ¶ 11.

⁷ *Id.*, ¶ 12.

⁸ Notwithstanding ACA’s support for the item in general, and for these consumer safeguards in particular, ACA suggests that, for the sake of clarity, the sentence referencing ACA’s comments that is currently contained at the end of paragraph 8 of the draft Report and Order be moved to the beginning of paragraph 11. ACA’s comments pertain specifically to the safeguards related to the delivery of electronic notices using the means that were previously approved by the Commission, and should not be considered a reflection of ACA’s views regarding the other matters discussed in the paragraph’s preceding three sentences (*i.e.* whether cable should be permitted to communicate with subscribers using other means that are “reasonably intended” or “reasonably calculated” to reach subscribers). See Draft Report and Order, ¶ 8. The sentence cited from ACA’s comments would be more appropriately used as an introduction to paragraphs 11 and 12 of the Draft Report and Order, which outline the Commission’s reasoning for adopting the specific consumer safeguards proposed in the NPRM and advocated by ACA. *Id.*, ¶¶ 11-12. Specifically, the beginning of Paragraph 11 could read: “The record supports our tentative conclusion that the general pro-consumer approach adopted in the 2017 Declaratory Ruling with respect to Section 76.1602(b) electronic notices is appropriate for all general Subpart T notice rules. Although it supports the use of electronic delivery, ACA argues that any change to our rules must not ‘increase the odds of customers not receiving notices,’ and therefore ‘supports application of the consumer safeguards adopted in the 2017 Declaratory Ruling,’ including the strict definition of what constitutes a ‘verified email,’ to additional Subpart T notice requirements.”

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary C. Lovejoy".

Mary C. Lovejoy

CC: Alison Nemeth
Erin McGrath
Evan Swarztrauber
Lyle Elder