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November 28, 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:

Throughout this proceeding, the American Cable Association and the American Television Alliance (of which ACA is a member) have argued that the best and most effective way to make the ATSC 3.0 transition truly “voluntary” is to require separate negotiations for first-time carriage of ATSC 3.0 signals.<sup>1</sup> In light of the record evidence showing that broadcasters are *already* seeking ATSC 3.0 carriage,<sup>2</sup> ACA disagrees with the *Order’s* conclusion that it is “premature” to address retransmission consent issues.<sup>3</sup>

We nonetheless noted Commissioner O’Rielly’s statement, in which he stated that broadcaster “attempts to make this transition involuntary could violate the obligation for broadcasters to negotiate in good faith.”<sup>4</sup> He continued: “I will be watching and the Commission may need to revisit as there becomes concrete examples to examine.”<sup>5</sup>

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<sup>1</sup> Comments of the American Cable Association at 10 (filed May 9, 2017) (“ACA Comments”). *See, e.g.*, Comments of the American Television Alliance at 25.

<sup>2</sup> Letter from Michael Nilsson to Marlene Dortch at 1 (filed Oct. 25, 2017).

<sup>3</sup> Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard, FCC 17-158 ¶ 78 (rel. Nov. 20, 2017) (“*ATSC Order*”).

<sup>4</sup> *Id.*, statement of Commissioner O’Rielly.

<sup>5</sup> *Id.*

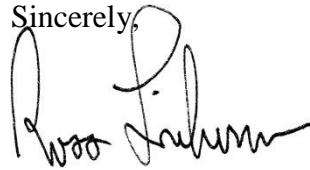
ACA and its members will be watching as well. In the next month, a substantial majority of ACA's small- and midsize cable operators will be renegotiating thousands of retransmission consent agreements that expire at the end of this year. Because the Commission chose not to adopt new rules preventing forced carriage of ATSC 3.0, broadcasters may now feel more liberated to make such demands—especially against ACA members who typically are both more susceptible to broadcast coercion (because they have less bargaining power) and suffer greater harm by forced carriage of ATSC 3.0 signals (because they have less capacity and less money to pay for equipment).<sup>6</sup> Should broadcasters insist on ATSC 3.0 carriage in their negotiations with ACA members, the “concrete examples” of which Commissioner O’Rielly spoke may become available sooner rather than later.

If we learn of such examples, we will not hesitate to present these facts to the Commission in a Petition for Reconsideration of the *Order* filed under section 1.429 of the Commission’s rules. Such an option remains available to ACA for 30 days after Federal Register publication of the *Order*.<sup>7</sup> We hope, however, that broadcasters will show some measure of restraint, at least while the period for reconsideration remains pending.

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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", written over a horizontal line.

Ross J. Lieberman

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<sup>6</sup> ACA Comments at 10-13.

<sup>7</sup> 47 C.F.R. § 1.429(d) (providing that parties have thirty days from the date of public notice of a final action to file petitions for reconsideration); *id.* § 1.4(b)(1) (defining “notice” in rulemaking proceedings as the date of publication in the Federal Register).