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October 29, 2014

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Washington, DC 20554

Re: American Cable Association Notice of Ex Parte Presentation Re: Revision of the Commission's Program Access Rules, MB Docket No. 12-68; Media Bureau Seeks Comment on Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" as Raised in Pending Program Access Complaint Proceeding, MB Docket No. 12-83.

Dear Ms. Dortch:

On October 29, 2014, the undersigned had a telephone conversation with Adonis Hoffman, Chief of Staff and Senior Legal Advisor – Media to Commissioner Mignon Clyburn. During the call, participants discussed Chairman Wheeler's proposal to extend the program access rules and other protections and rights afforded to multichannel video programming distributors ("MVPDs") to some online video distributors ("OVDs").¹ In addition, they also discussed ACA's long standing request that the Commission close a loophole in its program access rules that effectively denies nearly all small and medium-sized MVPDs from having the full legal protections and rights that Congress intended that the Commission is now considering extending to OVDs.²

The undersigned noted that there are more than 900 small and medium-sized MVPDs across the country that rely upon a single buying group, the National Cable Television Cooperative ("NCTC") to negotiate the bulk of their programming agreements. Further, although Congress specified that MVPDs and their buying groups were to be protected from discriminatory treatment by cable-affiliated programmers under the program access rules, the Commission defined the term "buying group" in the 1990s in a manner that today excludes NCTC. As a result, hundreds of small and medium-sized MVPDs that currently rely exclusively on the NCTC to negotiate their programming agreements are effectively left unprotected.

¹ Tom Wheeler, FCC Chairman, *Tech Transitions, Video, and the Future*, Official FCC Blog (Oct. 28, 2014 2:48 PM) available at <http://www.fcc.gov/blog/tech-transitions-video-and-future>.

² See Revision of the Commission's Program Access Rules, etc. *Revision of the Commission's Program Access Rules, etc.*, Report and Order in MB Docket Nos. 12-68, 07-18, 05-192, Further Notice of Proposed Rulemaking in MB Docket No. 12-68, Order on Reconsideration in MB Docket No. 07-29, Comments of the American Cable Association, MB Docket No. 12-68, at 1-62 (filed Dec. 14, 2012); Reply Comments of the American Cable Association, MB Docket No. 12-68, at 1-71 (filed Jan. 14, 2013).

Conversation then turned to the fact that the Commission has a two-year old Further Notice of Proposed Rulemaking (“FNPRM”) regarding this matter in which it tentatively concludes the definition of a buying group should be updated as ACA has requested:

[I]t appears that our existing definition of “buying group” set forth in Section 76.1000(c)(1) does not reflect accepted industry practices and thus may have the unintended effect of barring some buying groups from availing themselves of the protections of the nondiscrimination provision of the program access rules, in contravention of Congress’s express intent in enacting Section 628(c)(2)(B) of the Act. We tentatively conclude that we should revise Section 76.1000(c)(1) to require, as an alternative to the current liability options, that the buying group agree to assume liability to forward all payments due and received from its members for payment under a master agreement to the appropriate programmer.³

The undersigned noted that a majority of the current Commissioners (Commissioners Clyburn, Pai, and Rosenworcel) voted in favor of the FNPRM, and explained that fairness dictates that before a vote in favor of a new rulemaking to consider whether to expand the scope of the program access rules to new entities occurs, the Commission should take action to ensure that entities Congress explicitly intended to use the rules are in fact able to do so.

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

Sincerely,



Ross J. Lieberman

cc (via email): Adonis Hoffman

³ *Revision of the Commission’s Program Access Rules, etc.*, Report and Order in MB Docket Nos. 12-68, 07-18, 05-192, Further Notice of Proposed Rulemaking in MB Docket No. 12-68, Order on Reconsideration in MB Docket No. 07-29, 27 FCC Rcd 12605, ¶ 87 (2012).