National Cable & Telecommunications Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001
(202) 222-2300

www.ncta.com

Jennifer K. McKee
Vice President and Associate General Counsel

(202) 222-2460
(202) 222-2446 Fax

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25

Dear Ms. Dortch:

On November 24, 2014, Jenny Prime of Cox Enterprises, Inc., Terri Natoli of Time Warner Cable, Christianna Barnhart of Charter Communications, Sam Feder of Jenner & Block, Christin McMeley of Davis Wright Tremaine LLP, and Steve Morris and I of the National Cable & Telecommunications Association, met with Deena Shetler, William Layton, Christopher Koves, and Gregory Haledjian of the Wireline Competition Bureau, and Steven Spaeth and Doug Klein of the Office of General Counsel to discuss the Commission's pending data collection in the above-referenced proceeding.

We discussed the intersection of the Commission's special access data collection and the prohibition on disclosing personally identifiable information set out in section 631 of the Communications Act of 1934, as amended.[1] Section 631(c)(1) states that "a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned."[2] The statute contains a number of exceptions to this prohibition, two of which apply specifically to the disclosure of information to government entities: section 631(h) addresses disclosure of information to the government pursuant to a court order,[3] and section 631(c)(2)(D) allows disclosure to the government pursuant to the Electronic Communications Privacy Act of 1986, as amended (ECPA).[4] In particular, section 2703(c) of ECPA identifies a variety of mechanisms through which a governmental

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[1] *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, 29 FCC Rcd 10899 (Wireline Comp. Bur. 2014) (*Special Access Revised Data Collection Order*); 47 U.S.C. §551.

[2] 47 U.S.C. §551(c)(1). Section 631(c)(2)(C) makes clear that subscriber names and addresses are personally identifiable information covered by the disclosure prohibition. 47 U.S.C. §551(c)(2)(C).

[3] 47 U.S.C. §551(h).

[4] 47 U.S.C. §551(c)(2)(D). Specifically, section 631(c)(2)(D) cites chapters 119, 121, and 206 of Title 18 of the United States Code, which contain ECPA's provisions. 18 U.S.C. §§2510 *et seq.*

entity may require a provider to disclose customer records, including a warrant, a court order, consent of the subscriber, or an administrative subpoena.[5]

Given the importance of ensuring that providers do not run afoul of section 631's privacy requirements, we urged the Wireline Competition Bureau to issue an administrative subpoena requesting the data listed in the *Special Access Revised Data Collection Order*.[6] This will allow providers subject to section 631 to comply with that section's privacy requirements while providing the Commission with the full suite of information requested in the special access proceeding. Due to the large number of parties that could be subject to the administrative subpoena, the Bureau could satisfy its service obligations by issuing a public notice announcing the issuance of the subpoena, rather than individually serving it on every respondent.[7]

Respectfully submitted,

/s/ Jennifer K. McKee

Jennifer K. McKee

cc: D. Shetler
W. Layton
C. Koves
G. Haledjian
S. Spaeth
D. Klein

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[5] 18 U.S.C. §2703(c).

[6] The Wireline Competition Bureau may issue subpoenas pursuant to its delegated authority. 47 C.F.R. §0.291(f).

[7] 47 C.F.R. §1.47(a).