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May 1, 2015

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

Re: Amendment to the Commission’s Rules Concerning Effective Competition and Implementation of Section 111 of the STELA Reauthorization Act, MB Docket No. 15-53 – Written Ex Parte Communication

Dear Ms. Dortch:

On April 29, 2015, I spoke by telephone with Maria Kirby, Legal Advisor to the Chairman, and on April 30, 2015, along with Diane Burstein of NCTA, held separate meetings with Martha Heller, Acting Legal Advisor to Commissioner Clyburn, and Matthew Berry, Chief of Staff to Commissioner Pai, regarding NCTA’s written comments in the above-captioned proceeding.

We discussed how the record fully supports the Commission’s proposal to presume that cable operators face “effective competition” nationwide. There is a rational connection between the proposed rebuttable presumption and the record, which shows that the availability of competitive alternatives to cable, once limited to relative handful of communities, is now ubiquitous, that there has been a significant decline in cable’s share of multichannel video customers since the existing presumption was adopted, and that effective competition has been proven to exist in more than ten thousand cable communities throughout all parts of the country. In addition, NCTA’s analysis of DMA data shows competitors with subscribership exceeding 15 percent penetration in every one of the 210 DMAs nationwide.¹ Under the circumstances, it is unsurprising that the Media Bureau has granted virtually every effective competition petition that a cable operator has filed in the last several years. We explained that cable operators likely have not filed effective competition petitions in the remaining franchise areas not because they lack the requisite level of competition in all those communities but because they are deterred by the cost and other burdens of gathering information necessary to successfully prosecute such petitions.²

¹ NCTA Reply Comments at 2.

² The FCC has itself recognized that there may be various reasons for not filing, even if the incumbent operator could meet the test. *Id.* at 3.

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We also noted that the Commission has ample authority not only to make this long-overdue update to its rules – first raised by the Commission in 2002³ – but also to apply it to all cable operators, not just small cable operators. Indeed, given the absence of any factual evidence in the record that would justify continuing the old presumption with respect to any cable operators, it would be irrational to limit the application of the updated presumption based on a cable operator’s size. Moreover, nothing in the STELA Reauthorization Act of 2014 (“STELAR”) restricts the Commission’s authority to adopt the proposed update to its rules. To the extent STELAR discusses the burden of proof in these cases, a change in the rebuttable presumption would simply require franchising authorities to produce evidence rebutting the presumption, which the cable operator would then have to overcome based on its own evidence.⁴

Finally, we pointed out that opponents of reversing the presumption provided no evidence of consumer harm in the more than ten thousand communities nationwide that already have been found to face effective competition. Moreover, the availability of must carry broadcast stations still would be governed by the separate provisions of Sections 614 and 615 of the 1992 Cable Act.

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen

cc: Maria Kirby
Martha Heller
Matthew Berry

³ *In re Revisions to Cable Television Rate Rules*, Notice of Proposed Rulemaking and Order, 17 FCC Rcd. 11550 ¶53 (2002).

⁴ NCTA Reply Comments at 8.