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

**Re: Promoting Innovation and Competition in the Provision of Multichannel
Video Programming Distribution Services; MB Docket No. 14-261**

Dear Ms. Dortch:

On June 9, 2015, Rick Chessen (Senior Vice President, Law & Regulatory Policy), Diane Burstein (Vice President & Deputy General Counsel), Jill Luckett (Senior Vice President, Program Network Policy), and I met with Bill Lake, Michelle Carey, Nancy Murphy, Mary Beth Murphy, Steve Broeckaert, Brendan Murray, Kathy Berthot, Mary Margaret Jackson, Tom Hastings, Ryan Brunner, Julie Shursky, Brittani Zacco and Jaclyn Haughom of the Media Bureau; Alison Neplokh of the Office of Strategic Planning and Policy Analysis; Susan Aaron of the Office of General Counsel; and Lyle Elder of the Enforcement Bureau to discuss matters at issue in the above-referenced proceeding.

During the meeting, we summarized the arguments and positions set forth in NCTA's comments and reply comments. Specifically, we explained that the Commission's proposal to interpret the term "multichannel video programming distributor" ("MVPD") to apply to online video distributors that provide subscribers with multiple linear streams of video programming was inconsistent with the specific language of the definition of that term, as well as its legislative history and context – all of which make clear that the term applies only to *facilities-based* entities that provide subscribers not only video programming but also the *transmission path* on which such programming is delivered.¹ Moreover, interpreting the term, and therefore, the scope of the "program access" provisions of Section 628 of the Communications Act, to extend to online video distributors ("OVDs") would raise serious constitutional issues under the First Amendment, which the Commission is obligated to avoid where an alternative reasonable interpretation – in this case, the *most* reasonable interpretation – exists.²

¹ See NCTA Comments at 5-12; Reply Comments at 3-10.

² See NCTA Comments 12-15.

We also reiterated our position that there are no sound public policy rationales – least of all, those set forth in the Commission’s Notice of Proposed Rulemaking – for classifying OVDs as MVPDs. First, while the Notice suggests that affording OVDs the privileges of the program access rules will promote competition and pro-competitive outcomes in the video marketplace, vigorous competition is already flourishing not only among traditional facilities-based MVPDs but also among online providers of video programming. Forcing certain program networks to make their programming available to certain OVDs on terms and conditions that would not otherwise result from marketplace negotiations is not pro-competitive.³ Moreover, we noted that program networks often do not have the rights to distribute content online and that the Commission cannot and should not mandate that program networks negotiate with content owners for the ability to do so.⁴ Second, giving OVDs the right to insist on good faith retransmission consent negotiations with broadcasters serves no significant public policy since OVDs are unable to retransmit programming on broadcast signals without consent of the copyright owner of each retransmitted program and have no statutory license to do so.⁵

We also noted that, as discussed in our comments, classifying OVDs as MVPDs will impose serious administrative burdens on the Commission and on marketplace participants. There are statutory obligations as well as benefits associated with MVPD status, and OVDs cannot, as a matter of law and for sound reasons of regulatory parity, be exempted from those obligations. Determining how to enforce the responsibilities of online MVPDs as well as determining how program access obligations of cable operators apply to OVDs will be a complex regulatory task, involving arbitrary line-drawing, which runs directly contrary to the express statutory policy of allowing the Internet to continue to grow and develop “unfettered by Federal or State regulation.”⁶

Finally, we reiterated our agreement with the Commission’s proposal that an entity that provides the one-way transmission of video programming over a set of closed transmission paths that they own or manage are cable operators, without regard to the format of their transmission. Such an entity’s status does not change merely because it provides its service in IP format. We also confirmed our agreement with the Notice’s tentative conclusion that online video programming services provided by cable operators that when cable operators offer video programming services to ISP customers via the Internet, they would not be treated as cable operators with respect to the offering of such services but would be treated the same as other OVDs.⁷

³ See NCTA Comments 15-21; Reply Comments at 10-14.

⁴ See NCTA Comments at 26-28.

⁵ See NCTA Comments 21-24; Reply Comments at 14-17.

⁶ See NCTA Comments at 24-33.

⁷ See NCTA Comments at 33-36; Reply Comments at 17-19.

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Respectfully submitted,

/s/ Michael S. Schooler

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