



June 30, 2015

**Via ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: American Cable Association Notice of Ex Parte Communication; Revision  
of the Commission's Program Access Rules, MB Docket No. 12-68**

Dear Ms. Dortch:

On June 26, 2015, Ross J. Lieberman, Senior Vice President of Government Affairs, American Cable Association ("ACA"); Jeff Nourse, Senior Vice President, Legal & Regulatory Affairs of the National Cable Television Cooperative, Inc. ("NCTC"), and the undersigned met with Susan Aaron, Office of the General Counsel, and the following officials from the Media Bureau: William Lake, Chief; Michelle Carey, Deputy Chief; Mary Beth Murphy, Chief, Policy Division; Steve Broeckaert (via teleconference) and Kathy Berthot, Policy Division, to discuss the status of the Commission's rulemaking on modification of the program access rules to ensure that buying groups have the protection that Congress intended, consistent with ACA's previous filings in this rulemaking.<sup>1</sup>

As the Commission recognized in 2012, its current definition of a "buying group," first drafted more than twenty years ago, does not reflect accepted industry practices with respect to the liability of the buying group or its members to the programmer for payments, and has had the unintended effect of barring the nation's largest buying group, the National Cable Television Cooperative ("NCTC"), from benefitting from the program access protections Congress intended such buying groups to have under Section 628 of the Act.<sup>2</sup>

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<sup>1</sup> See *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 (2012) ("FNPRM"); Comments of the American Cable Association (filed Dec. 14, 2012); Reply Comments of the American Cable Association (filed Jan. 14, 2013).

<sup>2</sup> FNPRM, ¶ 87 ("Based on ACA's comments, it 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 non-discrimination 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.")

During the meeting, ACA encouraged the Commission to update its definition of a buying group to include a fourth alternative liability condition so that program access protections account for and extend to the longstanding business model of the NCTC, a business model that has near universal acceptance among programmers; clarify the standard of comparability for a buying group; and protect the right of buying group members to participate in master agreements negotiated by the group – lest the program access protections Congress intended buying groups to enjoy, once properly extended to include NCTC, are undermined by the exclusionary tactics of cable-affiliated programmers.<sup>3</sup>

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,



Barbara Esbin  
*Counsel to the American Cable Association*

cc: William Lake  
Michelle Carey  
Nancy Murphy  
Steve Broeckaert  
Kathy Berthot  
Susan Aaron

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<sup>3</sup> ACA reiterated that it has previously addressed and rebutted arguments in the record suggesting that the program access rules are no longer necessary. See, e.g., *Revision of the Commission's Program Access Rules, etc.*, MB Docket Nos. 12-68, 07-18, 05-192, Reply Comments of the American Cable Association at 8-19 (filed July 23, 2012); Letter from Barbara S. Esbin, Counsel for ACA, to Marlene H. Dortch, Secretary (filed Apr. 15, 2014); Letter from Barbara S. Esbin, Counsel for ACA, to Marlene H. Dortch, Secretary (filed Jan. 6, 2014); Letter from Barbara S. Esbin, Counsel for ACA, to Marlene H. Dortch, Secretary (filed Nov. 8, 2013). None of these objections has merit, giving the Commission no statutory or policy grounds to refrain from adopting the proposed program access reforms.