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August 20, 2015

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Ex Parte*** **Filing of the American Cable Association on Protecting and Promoting the Open Internet, GN Docket No. 14-28, and the Consumer and Government Affairs Bureau's Public Notice, DA 15-731, on the Small Business Exemption from the Open Internet Enhanced Transparency Requirements**[1]

Dear Ms. Dortch:

On August 18, 2015, Ross Lieberman, Senior Vice President of Government Affairs, and Mary Lovejoy, Vice President of Regulatory Affairs, American Cable Association (ACA), and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with the following staff of the Consumer and Government Affairs Bureau: Mark Stone, Kurt Schroeder, John. B. Adams, Jerusha Burnett, and (by telephone) Richard Smith. The purpose of the meeting was to discuss ACA's position, as stated in its comments,[2] that the Bureau should make permanent the temporary small business exemption from the Open Internet enhanced transparency requirements.

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1 *Consumer and Government Affairs Bureau Seeks Comment on Small Business Exemption from Open Internet Enhanced Transparency Requirements*, Public Notice, DA 15-731, GN Docket No. 14-28 (rel. June 22, 2015).

2 *See* Comments of the American Cable Association on the Small Business Exemption from Open Internet Enhanced Transparency Requirements, GN Docket No. 14-29 (Aug. 5, 2015) ("ACA Comments").

At the outset of the meeting, Mr. Lieberman explained that ACA represents approximately 700 local broadband service providers with fewer than 100,000 broadband customers and that approximately 680 of these providers have fewer than 20,000 broadband customers. He noted that virtually none of these smaller providers have in-house counsel or other personnel dedicated to addressing regulatory matters, and thus they would need to hire outside attorneys and consultants to address compliance with the enhanced transparency requirements. ACA therefore has a strong interest in making permanent the small-provider exemption to the enhanced transparency requirements.

Mr. Lieberman also noted that ACA participated extensively in the Paperwork Reduction Act process after the Commission adopted the 2010 Open Internet transparency rule, and that it was able to work cooperatively with the Commission staff as they drafted the *2011 Advisory Guidance*.[3] This guidance allows smaller providers to have sufficient flexibility to meet the rule's requirements, specifically by using alternative methodologies to measure and disclose information about network performance. Mr. Lieberman then stated that so long as the *2011 Advisory Guidance* continues to apply to the network performance requirements, ACA does not believe the additional obligations in the enhanced transparency requirements to measure and report at a more granular geographic level and measure and report on packet loss will result in undue burdens for smaller providers.

While the enhanced network performance requirements may not impose an undue burden on smaller providers, other enhanced requirements do. ACA representatives noted specifically that collecting and disclosing information about various network practices, such as the use of filters, priorities, and other measures to address congestion, would be burdensome, particularly because traffic management practices change as traffic types and patterns evolve. In addition, requiring direct notification to customers about usage triggers would burden smaller providers, particularly those that do not have automated notification systems in place. In both instances, ACA does not oppose a general obligation to inform customers about important network practices, but smaller providers, who best know their customers and have demonstrated compliance with the rule, should have flexibility in determining the specific information to be provided and how it should be disclosed. Accordingly, because the burdens of the enhanced requirements are tangible and significant and, as set forth in it comments and those of other

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[3] *See FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance with Open Internet Transparency Rule*, GN Docket No. 09-191, WC Docket No. 07-52, Public Notice, 26 FCC Rcd 9411 (2011) ("2011 Advisory Guidance").

parties,[4] the benefit for users are not great, ACA believes the Bureau should make permanent the exemption for providers with fewer than 100,000 broadband connections.

ACA representatives closed by saying that, just as with the 2011 Paperwork Reduction Act review, they stand ready to work cooperatively with the Bureau as it considers whether to make the exemption permanent.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,

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[4] *See* ACA Comments at 9 ("based on the experience of ACA members, this additional information required will be of marginal utility for their customers. As discussed herein, smaller providers already disclose information about their data plans and the triggers that will activate their use of network practices."); *see also* Comments of NTCA-The Rural Broadband Association, GN Docket No. 14-28 at 8 (Aug. 5, 2015) ("Accordingly, it stands to reason that any report of raw packet loss data would not be meaningful to the average consumer. And, it is not clear that explanations of sufficient length and complexity to disclose adequately the tensions and balances between packet loss, buffering, latency and bandwidth would be of any better usefulness.").