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November 25, 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

Dear Ms. Dortch:

On November 23, 2015, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), and the undersigned, Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Claude Aiken, Office of General Counsel, to discuss the Commission’s implementation of the *2015 Open Internet Order’s* enhanced transparency requirements, including the small business exemption.¹ ACA has filed comments arguing that the burdens of any transparency obligations imposed on ISPs should be balanced against the potential benefits for their users.² For smaller ISPs, who often do not have dedicated in-house

¹ *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, GN Docket No. 14-28, ¶¶ 154-184 (rel. Mar. 9, 2015) (“2015 Open Internet Order”). ACA considers all transparency requirements set forth in Section III.C.3.b of the *2015 Open Internet Order* to be enhanced transparency requirements regardless of whether the text refers to them as enhancements or clarifications or further clarifications.

² *See Protecting and Promoting the Open Internet, Notice of Information Collection*, GN Docket No. 14-28 and OMB Control No. 306-1158, Comments of the American Cable Association (July 20, 2015) (“ACA PRA Comments”); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Comments of the American Cable Association on the Small Business Exemption from Open Internet Enhanced Transparency Requirements (Aug. 5, 2015); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Reply Comments of the American Cable Association on the Small Business Exemption

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regulatory personnel and who tend to follow the technology leadership of larger providers and to invest fewer resources in network equipment than larger providers, the burdens associated with extensive and complex transparency requirements can be particularly onerous. In addition, the benefits achieved from imposing the panoply of requirements on smaller ISPs are less because owners and employees of these providers tend to be engaged with their communities, and thus more responsive to their users. Accordingly, ACA called for the Commission to make permanent the small business exemption and, in doing so, affirm that the *2011 Guidance*³ regarding use of alternative approaches to comply with the performance characteristics set forth in the Transparency Rule applies to the enhanced performance characteristic requirements.

Since filing comments, ACA representatives have met with Commission staff to continue a dialogue on implementation of the enhanced transparency requirements and to argue that the small business exemption, which has met with no opposition from any interested party, be made permanent.⁴ These discussions have been productive, and Commission staff have been responsive to subsequent requests for status updates. ACA representatives look forward to continuing this dialogue as the December 15, 2015 deadline approaches for the Consumer and Government Affairs Bureau to address whether to make permanent or otherwise extend the small business exemption.

from Open Internet Enhanced Transparency Requirements (Sept. 9, 2015) (“ACA Reply Comments”). *See also Ex Parte* Filing of the American Cable Association on *Protecting and Promoting the Open Internet et al.*, GN Docket No. 14-28 et al. (Aug. 20, 2015) (collectively, “ACA Small Business Exemption Filings”).

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, 9415 (2011) (“2011 Guidance”).

⁴ *See, e.g.*, Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 14-28 (Oct. 2, 2015).

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

Sincerely,

A handwritten signature in blue ink that reads "Thomas Cohen".

Thomas Cohen
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Counsel for the American Cable Association

cc: Claude Aiken