



**AMERICAN CABLE**  
ASSOCIATION

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February 9, 2016

**VIA ECFS**

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

**Re: Notice of Ex Parte Presentation of the American Cable Association; Media Bureau Request for Comment on DSTAC, MB Docket No. 15-64**

Dear Ms. Dortch:

On February 5, 2016, Ross Lieberman, Senior Vice President, Government Affairs, American Cable Association (“ACA”), Barbara Esbin, Cinnamon Mueller, counsel to ACA, and the undersigned met with Robin Colwell, Chief of Staff and Senior Legal Advisor to Commissioner O’Rielly. On February 8, 2016, Ross Lieberman and I met with Jessica Almond, Legal Advisor, Media, to Chairman Wheeler, Gigi Sohn, Counselor to Chairman Wheeler, Louisa Terrell, Advisor to Chairman Wheeler, and Gabrielle Whitehall, Intern. Later that day, Ross Lieberman, Barbara Esbin, and I met with Matthew Berry, Chief of Staff, and Bernie Archbold, of Commissioner Pai’s office.

In each meeting, ACA asked that the Commission, as it prepares to consider a Notice of Proposed Rulemaking based on the Competitive Navigation Device Proposal (“Device Proposal”) described in the Downloadable Security Technical Advisory Committee’s Final Report,<sup>1</sup> take account of the fact that smaller providers are increasingly offering innovative ways for subscribers to access video services over a wide array of devices. In addition to providing access to their own programming over mobile devices and retail in-home equipment such as Roku devices and gaming consoles, more and more small and medium-

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<sup>1</sup> FCC Chairman Proposal to Unlock the Set-Top Box: Creating Choice & Innovation (rel. Jan. 27, 2016), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0127/DOC-337449A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0127/DOC-337449A1.pdf); Downloadable Security Technical Advisory Committee, Report of Working Group 4 to DSTAC at 107-126, Attached to Public Notice, *Media Bureau Seeks Comment on DSTAC Report*, DA 15-982 (rel. Aug. 31, 2015) (“WG 4 Report”), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-982A6.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-982A6.pdf). Based on the public description of the Chairman’s proposal, it appears essentially identical in substance to the Device Proposal described in the DSTAC Final Report and the advocacy of Device Proposal supporters as reflected in the record of this proceeding. For this reason, ACA’s discussion is based on the Device Proposal as described in the WG4 Report.

size multichannel video programming distributors (“MVPDs”) are working with TiVo to provide their customers with whole-home/multiscreen solutions and access to OTT services like Netflix.<sup>2</sup>

For these reasons, ACA stated new regulations are not necessary, especially for smaller cable operators. However, if the Commission does move forward with its proposal, it should seek comment on whether and how to provide relief to smaller operators. ACA reiterated its previously expressed concerns that the Device Proposal would prove unduly burdensome, particularly for smaller MVPDs.<sup>3</sup> ACA reminded the Commission that it has regularly provided exemptions and compliance deadline extensions for smaller providers from obligations to deploy new equipment or to meet new technical requirements, and stated that the pending rulemaking should seek comment on why similar relief should not be provided for these providers, which serve roughly six percent of all TV households.<sup>4</sup> At a minimum, ACA urged the Commission tentatively conclude that all-analog systems should be exempt from any new requirements. Finally, ACA noted there is no statutory restriction on the Commission providing exemptions or compliance deadline extensions for smaller MVPD from the rulemaking’s proposed requirements.

This letter is being filed electronically pursuant to section 1.1206 of the Commission’s rules.

Sincerely,



Mary C. Lovejoy

cc: Robin Colwell  
Jessica Almond  
Gigi Sohn  
Louisa Terrell  
Gabrielle Whitehall  
Matthew Berry  
Bernie Archbold

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<sup>2</sup> See Press Release, TiVo, TiVo Surpasses Record 4.5 Million Subs Milestone (April 29, 2014), *available at* <http://investor.tivo.com/mobile.view?c=106292&v=203&d=1&id=1923479> (“TiVo has distribution deals with U.S. operators, including Suddenlink, RCN, Grande, Atlantic Broadband, General Communications Inc. (GCI), Astound, Cable ONE, Blue Ridge Communication, Mediacom, Midcontinent, Vyve Communications, and Wave Broadband... Jeff Klugman, TiVo’s Executive Vice President, said, ‘... it’s noteworthy that mid-size cable operators are answering the desires of their customers for whole-home/multiscreen solutions and access to OTT services like Netflix.’”)

<sup>3</sup> See generally, *Media Bureau Seeks Comment on DSTAC Report*, MB Docket No. 15-64, Comments of the American Cable Association (filed Oct. 8, 2015) (“ACA Comments”); Reply Comments of the American Cable Association (filed Nov. 9, 2015).

<sup>4</sup> According to Nielsen’s National Television Household Universe Estimates, there are 116.4 million TV homes in the U.S. for the 2015-16 TV season. See <http://www.nielsen.com/us/en/insights/news/2015/nielsen-estimates-116-4-million-tv-homes-in-the-us-for-the-2015-16-tv-season.html>. According to SNL Kagan, there were 100.4 million MSO subscribers in 2015. Tony Lenoir, Analyst, *U.S. Multichannel Subscriber Update and the Rise of Broadband-Only Homes*, SNL KAGAN (Apr. 2015). MVPDs with over 1 million subscribers cumulatively serve a total of 93.4 million subscribers. See Mike Farrell, *Eat or Be Eaten: Consolidation Creates A Top-Heavy List of 25 Largest MVPDs*, MULTICHANNEL NEWS (Aug. 17, 2015), *available at* [http://www.multichannel.com/sites/default/files/public/pdf/Coverstory\\_8\\_17\\_15\\_0.pdf](http://www.multichannel.com/sites/default/files/public/pdf/Coverstory_8_17_15_0.pdf).