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June 10, 2016

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

**Re: *Commercial Availability of Navigation Devices*, MB Docket No. 16-42, CS
Docket No. 97-80**

Dear Ms. Dortch:

On June 9, 2016, Rick Chessen and the undersigned of the National Cable & Telecommunications Association (“NCTA”) and Helgi C. Walker and Sarah E. Erickson-Muschko of Gibson, Dunn & Crutcher LLP met with Jonathan Sallet, General Counsel, Federal Communications Commission (“FCC”), Louisa Terrell, Advisor to Chairman Tom Wheeler, and the following staff from the FCC’s Office of General Counsel: Jacob Lewis, Linda Oliver, Susan Aaron, John Williams, Matthew Collins, and Marilyn Sonn (by phone) to discuss the above-referenced rulemaking proceeding.

We discussed key aspects of the legal white paper written by Theodore B. Olson, Helgi C. Walker, and Jack N. Goodman, which was filed with NCTA’s Comments in this proceeding:¹

- Section 629 is limited to assuring the commercial availability of *equipment* used to access the service *provided by* multichannel video programming distributors (“MVPDs”), and does not authorize the proposed rules, which instead aim to promote the creation of derivative, third-party *services* using the unbundled components of MVPD service.
- The FCC’s proposed rules threaten to override important copyright and consumer privacy protections by forcing MVPDs to provide naked data streams to third parties over which the FCC has no regulatory or enforcement authority.
- The Federal Trade Commission (“FTC”) proposal to enforce consumer privacy by resort to Section 5 of the FTC Act is legally problematic for several reasons and would subject

¹ See Comments of NCTA, MB Docket No. 16-42, CS Docket No. 97-80, at Appendix A (Apr. 22, 2016), available at <http://apps.fcc.gov/ecfs/document/view.action?id=60001690844>.

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similarly-situated entities to differing enforcement regimes, thereby causing unpredictable, conflicting, and inconsistent enforcement.

- The apps approach builds on standards that the industry has already developed by consensus and fully achieves the goals and requirements of Section 629 without raising any of these legal problems.

Sincerely,

/s/ Neal M. Goldberg

Neal M. Goldberg

cc: Jonathan Sallet
Louisa Terrell
Jacob Lewis
Linda Oliver
Susan Aaron
John Williams
Matthew Collins
Marilyn Sonn