



"Promoting consumer
choice and innovation
through advanced
facilities-based networks."

BRINGING FULLY COMPETITIVE BROADBAND TO AMERICA¹

FILED ELECTRONICALLY

October 1, 2008

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

Re: *Ex Parte* Presentations in MB Docket Nos. 07-29, 07-198, 00-96, 98-120, 07-148 and 07-42.

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, The Broadband Service Providers Association (BSPA) submits this notice of an *ex parte* presentation in the above-captioned proceedings.

On October 1, 2008, Amy Mehlman, RCN; and I had a meeting on behalf of the Broadband Service Providers Association (BSPA) with Rick Chessen, Media Advisor to Commissioner Copps, to discuss the Commission's rulemaking on Program Access Rules and Examination of Programming Tying Arrangements. We also discussed issues related to the DTV Transition. A copy of the meeting discussion points is appended as reference.

At this meeting we discussed the policy recommendations made by the BSPA as part of comments and *Ex Parte* documents previously filed in MB docket No. 07-198. These topics included our recommendation that the commission adopt the Wholesale Untying policy as recommended by ACA so long as that is combined with the BSPA proposal for FCC managed arbitration as the remedy for any pricing issues that cannot be resolved by commercial negotiation. We re-affirmed our desire to have issues related to closing the terrestrial loophole brought to a vote this year. We also provided a copy of the BSPA Amicus Brief filed in support of the 07-29 5 year extension of the 628 prohibitions on exclusive contracts.

We discussed the BSPA support for the creation of a Retransmission Quiet Period as filed in our *Ex Parte* related to the current DTV Transition Proceedings.

While the BSPA will not be directly impacted by the Media Access project (MAP) proposed changes to the 616 Carriage Complaint Process, we never-the-less offered our support for these changes seeing them as equivalent to changes that have been proposed by the BSPA for the 628 Program Access Complaint Process.

Respectfully submitted for,

Broadband Service Providers Association

By: _____/s/

John Goodman, Executive Director, BSPA
1601 K Street NW
Washington, D.C. 20006

4 Enclosures

cc: Rick Chessen, Amy Mehlman

¹ The current members of BSPA include: Hiawatha Broadband, Knology, RCN, and SureWest Communications. BSPA is located at 1601 K Street NW, Washington, DC 20006. Phone: 202.661.3945

Broadband Service Providers Association (BSPA)
FCC Discussion Outline

The BSPA has proposed several FCC actions in its filed Comments and Reply Comments in the 07-198 proceeding. The BSPA will now also support policies for Wholesale Untying.

1. Proposed policies that the BSPA continues to support.
 - a. Close the Terrestrial Loophole
 - b. No early sunset for program access rules.
 - c. A stay for pre-existing carriage during a complaint proceeding.
 - d. FCC managed arbitration to resolve pricing issues.
2. The BSPA supports the ACA proposals for Wholesale Untying.
 - a. This proposal does not restrict bundles.
 - b. BSPA members need better access to individual channels to take advantage of the DTV transition and offer new choices to consumers.
 - c. Recent and pending contracts are designed to preserve the legacy Expanded Basic and expand tying into new carriage requirements.
 - d. We do not support any rules that lead to price regulation at the FCC. Pricing issues should be resolved with the following process:
 - i. FCC determination that a complaint is valid.
 - ii. Provision for a final commercial resolution opportunity.
 - iii. Last/Best FCC Arbitration if needed.
3. The BSPA supports creation of a Retransmission Quiet Period.
 - a. The start date needs to be in 2008.
 - b. This proposal does not prevent any negotiations for new contracts. It only prevents a loss of signal during the DTV Transition.
 - c. Contract resolutions can be retroactive to the end of the last contract.
4. The BSPA supports MAP proposals for Carriage Complaint Reform.
 - a. Carriage Complaint rules should be equivalent to Program Access rules.
 - b. Program Access and Carriage Rules are based on the same market power conditions of vertical integration and scale.
5. Close the Terrestrial Loophole.
 - a. The FCC has clear authority.
 - i. Primary – 628(b) (Minimum Regulations)
 - ii. Secondary – 706 (Broadband Deployment)
 - b. Cover HD and VOD (Technology Neutral)
 - c. Complaint proceedings are not the best solution.
 - d. Merger conditions are not the best solution.
6. The BSPA filed an Amicus Brief in the Cablevision/Comcast Case to overturn the FCC 5 year extension of the 628 prohibitions on exclusives.