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October 6, 2008

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

VIA ECFS

**RE: Notice of Ex Parte Presentation; MB Docket Nos. 03-185, 07-198, and 07-294;
CS Docket No. 98-120**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b), we electronically provide this notice of an ex parte presentation in the dockets listed above. On October 3, 2008, the following persons met with Chairman Kevin J. Martin's Legal Advisor, Michelle Carey:

Ross J. Lieberman, Vice President of Government Affairs, ACA
Jeremy M. Kissel, Cinnamon Mueller, Counsel for ACA

At the meeting, participants expressed ACA's continued support for Commission action in the wholesale programming market rulemaking (MB Docket No. 07-198) to address the various harms that result from the abuses of broadcasters and programmers in their negotiations with multichannel video programming distributors (MVPDs). Participants urged prompt Commission adoption of the proposals contained in ACA's January 3, 2008 comments filed in this docket.

Participants also discussed the Notice of Proposed Rulemaking that would allow Class A television stations to apply for full-power status and gain must carry rights, which was included on the FCC's tentative agenda for the next open meeting scheduled for October 15, 2008. It was made known that many ACA members already carry Class A television stations that offer local and diverse programming that is desired by the communities and customers served by the operator, and asserted that allowing all Class A stations the right to demand must carry would eliminate the market-based incentive that today drives them to offer compelling content. Participants suggested that the best first step to increasing the amount of local and diverse programming on television would be for the Commission to adopt the proposals put forth by the ACA in the wholesale programming market rulemaking, which would prohibit broadcasters and programmers from refusing to offer their channels on a standalone basis on reasonable rates, terms, and conditions. Not having to carry unwanted programming as a condition to carrying wanted programming would free up small, independent cable operators' channel capacity and cash resources that could then be used to carry more independent networks, including Class A stations. Setting aside concerns about the Commission's statutory authority and other constitutional issues raised by additional must carry burdens, participants stated that if Class A television stations were granted full-power status and must carry rights, there must be exemptions for small cable systems with limited channel capacity and those with a small subscriber base. Moreover, it was noted that if Class A television stations were provided a more streamlined

path toward full-power status and mandatory carriage rights, they should be required to comply with *all* existing obligations of full-power stations, including the airing of a minimum amount of children's programming, and other obligations that may be proscribed in the future, such as having a community advisory board, having a physical presence at their studios during all hours of operation, and filing quarterly performance reports, to ensure that Class A television stations, just like full power stations are adequately serving their local communities' needs.

Finally, participants urged the Commission to promptly issue its Notice of Proposed Rulemaking on the retransmission consent quiet period. During this discussion, participants noted that a significant number of small cable operators' retransmission consent agreements expire on December 31, 2008, at 11:59 PM. As such, the ACA agrees with other commentators that the quiet period must begin prior to the expiration of these contracts, and believes December 15 of this year, if not sooner, to be an appropriate start date to minimize consumer confusion during the weeks and months before the digital transition. In response to NAB's assertion that consumers would not confuse a retransmission consent dispute that happens in January of 2009 with some digital television transition related matter,¹ participants pointed to findings in the U.S. Government Accountability Office's (GAO) latest report on the extent of consumer awareness about the transition. According to their polling, among those who would be *unaffected* by the transition, which would include many cable and satellite TV subscribers, "30 percent indicated they have plans to ready themselves for the transition – despite the fact that no action will be required to maintain television service."² For these consumers, there is substantial risk that the loss of a signal due to a retransmission consent dispute in January would cause them to needlessly purchase a digital-to-analog converter box, or apply for a government coupon of limited supply out of confusion. With regard to the NAB's claim that viewers who lose signals as a result of retransmission consent impasse would not be confused because they would be "inundated with information about the dispute by DBS and cable providers as well as local news outlets,"³ participants pointed out that to the extent that retransmission consent disputes resulting in dropped signals are covered by local news outlets, often little to no attention is paid to those involving small cable operators.

Sincerely,



Jeremy M. Kissel

cc: Michelle Carey (via email: Michelle.Carey@fcc.gov)
Ross J. Lieberman

¹ National Association of Broadcasters, *Ex Parte*, CS Docket No. 98-120, at 4 (filed Sept. 8, 2008) ("*NAB Ex Parte*").

² Statement of Mark L. Goldstein, Director of Physical Infrastructure Issues, United States Government Accounting Office, before the House Subcommittee on Telecommunications and the Internet, June 10, 2008, at 4 (available at <http://www.gao.gov/new.items/d08881t.pdf>).

³ *NAB Ex Parte* at 3.