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**EX PARTE**

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

**Re: MB Docket Nos. 07-29; 07-198**

Dear Ms. Dortch:

On December 23, 2009, Diane Burstein and I met with Austin Schlick, Stuart Benjamin, Marilyn Sonn and Susan Aaron of the Office of General Counsel, and with Diana Sokolow and David Konczal of the Media Bureau. During the meeting, consistent with NCTA's written comments in the above-captioned proceeding and in the video competition proceeding, we discussed the legal reasons against extending the program access rules to terrestrially-delivered programming. We also discussed why the D.C. Circuit's decision upholding the FCC's interpretation of Section 628(b) in the context of exclusive contracts that directly precluded competitors from providing video programming (including satellite-delivered programming) to residents of multiple dwelling units did not provide a justification for the FCC to regulate contracts for the provision of terrestrially delivered programming.

We also discussed how the FCC has previously evaluated complaints brought under Section 628(b) alleging that exclusive contracts for the provision of terrestrially-delivered programming were "evasions" of Section 628(c)'s ban on exclusive contracts for satellite-delivered programming. In those cases, Commission precedent required a complainant to show that such exclusivity was both "unfair" and had the purpose or effect of "hindering significantly or preventing" an MVPD from providing satellite cable programming to subscribers or customers.

Respectfully submitted,

**/s/ Michael S. Schooler**

Michael S. Schooler

cc: Austin Schlick  
Stuart Benjamin  
Marilyn Sonn  
Susan Aaron  
Diana Sokolow  
David Konczal