



National Cable & Telecommunications Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001
(202) 222-2300

www.ncta.com

Michael S. Schooler
Vice President and Deputy General Counsel

(202) 222-2445
(202) 222-2446 Fax

January 6, 2010

EX PARTE

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

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

Dear Ms. Dortch:

On January 5, 2010, Diane Burstein and I met with Rick Kaplan, Acting Chief of Staff to Commissioner Mignon Clyburn. During the meeting, consistent with NCTA's written comments in the above-captioned proceeding and in the video competition proceeding, we discussed the legal and policy 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: Rick Kaplan