



National Cable & Telecommunications Association
25 Massachusetts Avenue, NW
Suite 100
Washington, DC 20001-1431
(202) 222-2300

James Assey
Executive Vice President
(202) 222-2519
(202) 222-2515 Fax
jassey@ncta.com

January 14, 2010

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

On January 13, 2010, I met with Commissioner Mignon Clyburn and Rick Kaplan, Acting Chief of Staff. In a separate meeting, I met with Commissioner Michael J. Copps and Joshua Cinelli, Legal Advisor. At those meetings, consistent with NCTA's comments in the above-captioned proceeding, I reiterated that Section 628(b) does not provide the FCC with authority to require cable operators to share terrestrially-delivered programming.

But even if the FCC were to reinterpret Section 628(b) to reach terrestrially-delivered programming, I stated that in a competitive marketplace, public policy decisions should encourage marketplace participants to differentiate their consumer offerings by, for example, investing in and offering local programming.

Moreover, I stated that there would be no basis for adopting a presumption that a cable operator's decision not to provide a regional sports network (RSN) to a competitor was an "unfair method of competition or unfair or deceptive act or practice" or "significantly hinders or prevents" that competitor from providing satellite-delivered cable programming. Thus, if the FCC were to reinterpret Section 628(b) to reach terrestrially-delivered programming, the burden of meeting those tests should properly rest with the complainant.

Finally, I explained that the circumstances in which cable operators have been alleged to "withhold" RSNs are highly fact specific. Thus, there would be no basis for the FCC to presume that any withholding means that a competitor would be "significantly hindered" wherever it cannot carry a particular RSN. Such a presumption would be especially odd, for example, in light of the likely competitive effect of the most notable arrangement for exclusivity by a multichannel video program distributor (MVPD) in all of sports – the exclusive carriage by DirecTV, the second largest MVPD in the nation, of the NFL's Sunday Ticket. I urged the FCC

Ms. Marlene H. Dortch
January 14, 2009
Page 2

to avoid adopting one-sided rules that unfairly inhibit cable operators' ability to engage in legitimate competitive responses.

Respectfully submitted,

/s/ James Assey

James Assey

cc: Commissioner Mignon Clyburn
Commissioner Michael J. Copps
Rick Kaplan
Joshua Cinelli