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Ex Parte

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

Re: MB Docket No. 07-42

Dear Ms. Dortch:

On June 29, 2011, Diane Burstein, Vice President and Deputy General Counsel, National Cable & Telecommunications Association and I met with Erin McGrath, Interim Legal Advisor to Commissioner Robert McDowell.

We stated that the Commission should seek further comment before it considers rules adopting a “standstill” provision, which would allow the Commission to mandate terms and conditions of cable carriage prior to a ruling on the merits of a program carriage complaint.

We explained that a potential standstill requirement raises significant legal issues that must be considered before the Commission adopts a final rule. First, the 2007 Notice of Proposed Rulemaking in this proceeding did not provide notice that the Commission was considering such a requirement. Proceeding directly to a rule in these circumstances would thus be at odds with the notice provisions of the Administrative Procedure Act. Second, we discussed how Section 616 does not provide the authority to require carriage as an interim remedy, and how absent such express authority, Section 624(f) of the Communications Act bars the Commission from imposing requirements regarding “the provision or content of cable services.” Third, requiring MVPDs to carry programming under these circumstances directly implicates free speech concerns.

Finally, we stated that there are significant practical issues, such as whether and how an operator could be made whole if the Commission subsequently found that the complaint was unfounded, which would benefit from further record evidence.

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen

cc: Erin McGrath