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Ex Parte

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

**Re: In re Leased Commercial Access; Development of Competition and Diversity
in Video Programming Distribution and Carriage, MB Docket No. 07-42**

Dear Ms. Dortch:

On July 26, 2011, I met with Edward P. Lazarus, Chief of Staff, and Sherrese Smith, Senior Counsel and Legal Advisor, to Chairman Genachowski, to reiterate our view that the Commission should seek comment on a potential “standstill” requirement in the above-referenced proceeding before considering adoption of a final rule.

First, I noted the significant damage that would result from such a rule in interfering with arms-length marketplace negotiations, and ultimately, in raising costs to consumers. I also noted that the Commission has not provided adequate public notice that it was considering a standstill rule, and in particular that the 2007 Notice of Proposed Rulemaking (NPRM) failed to provide any indication that the Commission was considering a standstill requirement.¹ Given the Third Circuit’s recent *Prometheus* decision and other relevant case law, the Commission should remedy the notice deficiency before considering adoption of a final rule.²

¹ See Letter from Rick Chessen, Senior Vice President, Law and Regulatory Policy, NCTA, to Marlene H. Dortch, Secretary, FCC, filed in MB Docket No. 07-42 at 4 (July 6, 2011).

² See Letter from Rick Chessen, Senior Vice President, Law and Regulatory Policy, NCTA, to Marlene H. Dortch, Secretary, FCC, filed in MB Docket No. 07-42 at 1 (July 8, 2011) (explaining that a recent Third Circuit decision made four findings relevant to the APA’s notice and comment standard which apply with equal or greater force in the instant docket were the Commission to adopt a final “standstill” rule without seeking comment).

Moreover, I explained that, because of the lack of notice, there are several significant issues on which the Commission lacks record evidence, including potential limits on the Commission's authority under Section 624(f) of the Communications Act to adopt a standstill requirement and the distinct characteristics of the Act's program carriage provisions that would make it inappropriate to simply apply similar rules from other contexts.

Respectfully submitted,

/s/ James Assey

James Assey

cc: Edward P. Lazarus
Sherrese Smith