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April 19, 2012

**Via ECFS**

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Ex Parte Communication; In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, CS Docket No. 98-120**

Dear Ms. Dortch:

This letter is submitted on behalf of the American Cable Association ("ACA") in response to inquiries raised during its ex parte meeting with Media Bureau staff on April 3, 2012<sup>1</sup> regarding whether the high definition ("HD") carriage exemption is necessary for analog-only cable systems to offer must-carry broadcast signals in analog-only.<sup>2</sup> As discussed below, the carriage of must-carry signals in an HD format on analog-only systems is not "technically feasible" within the meaning of Section 614(b)(4)(A) of the Communications Act ("Act") and Section 76.62(c) of the Commission's rules.<sup>3</sup> For this reason, the requirement that cable systems carry HD must-carry signals in HD format should never apply to analog-only systems, and the Commission should make this clear by permanently exempting such systems from the requirement.

Section 614(b)(4)(A) of the Act requires that cable operators transmit must-carry local broadcast signals "without material degradation," and instructs the Commission to "adopt carriage standards to ensure that, *to the extent technically feasible*, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no

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<sup>1</sup> See *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, CS Docket No. 98-120*, Ex Parte Letter from James N. Moskowitz, Cinnamon Mueller, to Marlene Dortch, Secretary, Federal Communications Commission (April 3, 2012) ("*ACA April 3rd Ex Parte*").

<sup>2</sup> Regardless of whether the Commission rules in this proceeding that it is not technically feasible for analog-only systems to carry must-carry signals in HD, the Commission should not prejudice the need well-established in the record for the Commission to extend the HD carriage exemption for cable systems with fewer than 2,501 subscribers or less than 553 MHz of activated channel capacity.

<sup>3</sup> 47 U.S.C. § 534(b)(4)(A); 47 C.F.R. § 76.62(c).

less than that provided by the system for carriage of any other type of signal.”<sup>4</sup> In its *Fourth Report and Order*, the Commission established the HD carriage exemption for small systems -- specifically, those with fewer than 2,501 subscribers and those with less than 553 MHz of activated channel capacity – from the HD carriage requirement even if those systems carry *some* programming in HD.<sup>5</sup> During its April 3<sup>rd</sup> meeting with Media Bureau staff, ACA reiterated its support for the Commission’s proposal to extend that small-system exemption for another three years. For the reasons set forth in our initial comments, it remains unduly burdensome for small systems to comply with the HD carriage requirement.

In addition, ACA urged that the exemption be extended *permanently* for analog-only systems.<sup>6</sup> ACA believes that, by definition, it will *never* be feasible for an analog-only system to provide programming in HD format. Staff questioned whether the HD carriage exemption is even required for analog-only systems to offer must-carry broadcasters’ signals in analog-only given the technical feasibility requirement of Section 76.62(c) of the Commission’s rules. ACA agrees that the infeasibility of providing HD signals on an analog-only system should speak for itself. Nevertheless, to eliminate any possible uncertainty or confusion and to obviate the need to address this question in the future, the Commission should make clear that this is the case by permanently exempting analog-only systems from the HD carriage requirement.

If you have any questions, or require further information, please do not hesitate to contact me directly.

Sincerely



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James N. Moskowitz  
Counsel to the American Cable Association

cc (via email): Michelle Carey  
Alison Neplokh  
Mary Beth Murphy  
Steve Broeckaert  
Evan Baranoff  
John Gabrysch

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<sup>4</sup> 47 U.S.C. § 534(b)(4)(A) (emphasis added). See also *In re Carriage of Digital Television Broadcast Signals*, Third Report & Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 21064, ¶ 5 (2007)(citing H.R. Conf. Rep. No. 102-862, at 67 (1992)).

<sup>5</sup> See *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Doc. No. 98-120, Fourth Report and Order, 23 FCC Rcd 13618, ¶¶ 7, 12 (2008) (“*Fourth Report and Order*”).

<sup>6</sup> *ACA April 3rd Ex Parte* at 3; *ACA Comments* at 17-18; *ACA Reply Comments* at 13-14.