

Matthew A. Brill
Direct Dial: (202) 637-1095
Matthew.Brill@lw.com

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Abu Dhabi	Moscow
Barcelona	Munich
Beijing	New Jersey
Boston	New York
Brussels	Orange County
Chicago	Paris
Doha	Riyadh
Dubai	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

April 26, 2012

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

Re: Notice of Ex Parte Presentation, CS Docket No. 98-120

Dear Ms. Dortch:

On April 25, 2012, Cristina Pauzé of Time Warner Cable Inc. (“TWC”) and the undersigned met with Lyle Elder, Special Counsel to Chairman Genachowski, to discuss the pending Notice of Proposed Rulemaking regarding the impending sunset and potential extension of the Commission’s viewability rule. Consistent with TWC’s comments, we argued that the viewability mandate adopted in 2007 is not compelled by Section 614 of the Communications Act and cannot be extended without risking a violation of cable operators’ First Amendment rights. We pointed out that the Commission must meet a substantial burden if it were to compel cable operators to carry broadcast stations in both digital or analog format (or, alternatively, to distribute receiving equipment at no charge), and we argued that the record is devoid of any information that could satisfy that burden. Indeed, given emergence of the Internet as a distribution platform and the robust competition among multichannel video programming distributors, we explained that it likely would be impossible for the Commission to justify a new compelled-speech mandate. We further noted that the failure to consider comparable mandates for non-cable MVPDs exacerbates the concerns both under the First Amendment and the Administrative Procedure Act.

Please contact the undersigned if you have any questions regarding these issues.

Sincerely,

/s/ Matthew A. Brill

Matthew A. Brill
of LATHAM & WATKINS LLP
Counsel for Time Warner Cable Inc.

cc: Lyle Elder