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James N. Moskowitz
Admitted in the District of Columbia
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June 1, 2012

Via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: American Cable Association Notice of Ex Parte Communications; In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, CS Docket No. 98-120; In the Matter of the Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment, MB Doc. No 11-169, PP Doc. No. 00-67

Dear Ms. Dortch:

On May 30, 2012, Ross Lieberman, Vice President of Government Affairs, American Cable Association ("ACA") and the undersigned, met with Lyle Elder, Attorney Advisor to Chairman Genachowski to discuss the Notice of Proposed Rulemaking ("NPRM") in the above referenced docket.¹

Consistent with its comments in this proceeding, ACA expressed support for the Commission retaining the rule exempting qualifying small cable systems² from the requirement that they deliver must-carry broadcast signals in high definition (HD) format.³ ACA explained that the HD carriage exemption has worked as intended by providing many eligible small cable systems with the additional time they needed to provide must-carry broadcast signals in HD. ACA also made clear that despite the success of the HD carriage exemption, there remain a number of smaller cable systems that

¹ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, CS Doc. No. 98-120, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, FCC 08-193 (rel. Feb. 10, 2012) ("NPRM").

² The HD exemption applies to systems that have less than 553 MHz of activated channel capacity, or fewer than 2,501 subscribers that are not owned by a very large multichannel video programming distributor ("MVPD").

³ See *NPRM* at ¶ 20 (Commission tentatively concludes that it is in the public interest to extend the small-system HD exemption.); *In the Matter of Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, CS Doc. No. 98-120, Comments of the American Cable Association, 1-4 (filed March 13, 2012) ("ACA Comments") (setting forth ACA's position with regard to extension of the HD must-carry exemption).

continue to rely upon it, and these systems need the exemption for all the same reasons that the Commission adopted it originally.⁴

ACA also expressed its support for allowing the current viewability rule to expire, and noted its opposition to the National Association of Broadcasters' ("NAB") suggestion that the Commission retain the current viewability rules but permit cable operators to provide *free* set-top boxes that enable access to digital broadcast signals to subscribers in analog-only households.⁵ ACA explained that many of its members, like larger cable operators, have an interest in freeing up valuable channel capacity so that they may offer subscribers new and improved services, such as faster broadband and additional programming, and how permitting the viewability rule to sunset would enable many of its members to do so. However, consistent with its position in the Basic Tier Encryption proceeding,⁶ ACA also laid out why requiring small cable operators to offer *free* set-top boxes in order to take advantage of this opportunity places a disproportionate burden on them compared to larger operators. ACA explained that smaller operators are charged higher per-unit fees than larger providers to acquire set-top boxes, and, unlike larger operators, incur recurring monthly per-unit fees when subscribers utilize additional set-top boxes.⁷ For these reasons, ACA urged rejection of the NAB's *free* set top box proposal. ACA explained that the NAB's concerns about consumer harm are overstated because ACA's members who operate hybrid analog/digital systems make available for lease digital set-top boxes that permit digital-only signals to be viewed on analog television sets, and analog-only cable customers that are served by these hybrid systems can commonly obtain boxes from their providers at low cost.

⁴ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, CS Doc. No. 98-120, Reply Comments of the American Cable Association, 8-9 (filed March 22, 2012) ("ACA Reply Comments"); *In the Matter of Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, CS Doc. No. 98-120, Comments of National Cable and Telecommunications Association, 23-24 (filed March 12, 2012).

⁵ Letter from Jane Mago, Executive Vice President & General Counsel, National Association of Broadcasters, to Marlene Dortch, Secretary, Federal Communications Commission, CS Doc. No. 98-120, 4 (May 23, 2012).

⁶ *In the Matter of the Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Doc. No. 11-169, PP Doc. No. 00-67, Reply Comments of the American Cable Association (filed Dec. 12, 2011) (urging the Commission not to adopt a "one-size-fits all" approach to the consumer protections measures that would be applied to cable operators who seek to avail themselves of the basic tier encryption waiver, but instead adopt a more flexible alternative for smaller cable operators that permit them to acquire the most inexpensive set-top boxes available on the market, which should include refurbished set-top boxes with integrated security that have previously been deployed in the market).

⁷ ACA Reply Comments at 5-7 (explaining that set-top boxes are more expensive on a per-unit basis for small operators than for larger operators).

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely



James N. Moskowitz
Counsel to the American Cable Association

cc (*via email*): Lyle Elder