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June 4, 2012

**Via ECFS**

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

**Re: American Cable Association (“ACA”), *Ex Parte* Presentation: 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 Docket No 11-169, PP Docket No. 00-67**

Dear Ms. Dortch:

On May 31, 2012, Matthew Polka and Ross Lieberman, ACA, and the undersigned, Thomas Cohen of Kelley Drye & Warren LLP, met with Commissioner Ajit Pai, his Chief of Staff, Matthew Berry, and Acting Legal Advisor, Gene Fullano. The purpose of the meeting was to provide an overview of ACA, its membership of approximately 850 local service providers, and the key regulatory issues of interest to the organization. As Mr. Polka noted at the outset of the meeting, because the members of ACA have expanded their operations over the past decade to provide not only video programming services but also voice and broadband Internet access services to residential customers, and in some instances to business customers, ACA has an interest in a wide range of Commission proceedings. He added that since many of ACA’s members are relatively small, with most having fewer than 5,000 subscribers, ACA is particularly concerned that any regulatory requirements not impose onerous burdens on them.

Next, following on his May 29, 2012 meeting with Mr. Berry,<sup>1</sup> Mr. Lieberman discussed at length the Commission’s legal authority to grant small cable systems an exemption from the

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<sup>1</sup> See *American Cable Association Notice of Ex Parte Communications*, CS Docket No. 98-120, May 31, 2012.

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requirement to carry high definition (HD) broadcast signals in HD (CS Docket No. 98-120).<sup>2</sup> In this proceeding, ACA has advocated that the Commission retain this exemption, which was first adopted by the Commission in 2008.<sup>3</sup> Mr. Lieberman stated the Commission's legal authority stems from Section 614(B)(4)(A) of the Communications Act, which provides that the Commission ensure that any "carriage standards" for must-carry local television station signals, including high definition signals, be "technically feasible." Smaller systems that are bandwidth constrained (typically systems with less than 553 MHz of capacity) are technically incapable of adding additional HD channels, even if they offer some programming in HD. Moreover, smaller systems that are financially constrained (typically systems with fewer than 2,501 subscribers) lack the ability to purchase equipment necessary to offer the signals of must carry stations in HD, and thus are effectively technically incapable of providing HD broadcast signals in HD. Mr. Lieberman stated that ACA has provided data in the record demonstrating the extent to which cable systems with less than 553 MHz of capacity are bandwidth constrained and those with fewer than 2,501 subscribers are financially constrained and lack the necessary equipment to offer must carry signals in HD. By previously instituting a blanket exemption for these two classes of smaller systems rather than requiring relief through the Commission's standard waiver process, the Commission has ensured the process for smaller entities to obtain relief is not itself burdensome. The Commission should continue this policy in reaching a decision in the pending proceeding.<sup>4</sup>

Mr. Lieberman closed the meeting by briefly discussing ACA's support for allowing the current viewability rule to expire and its opposition to the National Association of Broadcasters' ("NAB's") suggestion that the Commission retain the current viewability rules but permit cable operators to avoid a dual carriage requirement by providing free set-top boxes that enable access to digital broadcast signals to subscribers in analog-only households.<sup>5</sup> He explained that many ACA members want to free up valuable channel capacity so they may offer new and improved services and that permitting the viewability rule to sunset would further this goal. At the same time, requiring smaller cable operators to offer free set-top boxes would place a disproportionate burden on them since they are charged higher per-unit fees than larger providers to acquire set-

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<sup>2</sup> *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).

<sup>3</sup> *Carriage of Digital Television Broadcast Signals*, CS Docket No. 98-120, Fourth Report and Order, 23 FCC Rcd 13618 (2008) ("*Fourth Report & Order*").

<sup>4</sup> Reliance by the Commission on its authority under Section 614 to retain the exemption also should be informed by the Regulatory Flexibility Act, which directs the Commission to consider the impact of its regulations on small business entities.

<sup>5</sup> See e.g. Reply Comments of the American Cable Association, *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, (filed Dec. 12, 2011).

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top boxes, and, unlike larger operators, incur recurring monthly per-unit fees when subscribers utilize additional set-top boxes. Finally, he explained that NAB concerns about consumer harm are overstated because ACA 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.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



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cc: Commissioner Ajit Pai  
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