



August 29, 2012

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

**Re: Notice of *Ex Parte* Communication: MB Docket Nos. 12-68, 10-71**

Dear Ms. Dortch:

On August 27, 2012, Melissa Newman of CenturyLink, Inc., Kathleen Abernathy of Frontier Communications Corp., Malena Barzilai of Windstream Communications, and the undersigned of the Independent Telephone & Telecommunications Alliance (“ITTA”), met with Zac Katz and Charles Mathias, legal advisors to Chairman Genachowski, to discuss concerns relating to video content accessibility for small and new entrant multichannel video programming distributors (“MVPDs”).

As we explained, small and new entrant MVPDs face unique challenges with respect to access to video programming. The provision of video service is necessary for such providers to compete against incumbent MVPDs, yet their unequal bargaining power in comparison to dominant video providers and programmers in the markets they serve translates to higher rates and unfair terms for the carriage of both broadcast and non-broadcast programming.

Among other things, small and new entrant MVPDs lack any means to determine market value for programming due to mandatory non-disclosure provisions in programming agreements.<sup>1</sup> However, they are required to agree to these provisions in order to gain access to programming. In ensuring that small and new entrant MVPDs have access to video content on reasonable and non-discriminatory terms, the Commission should consider appropriate mechanisms that would provide greater transparency of programming agreements, including mandatory disclosure of such agreements to the Commission.

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<sup>1</sup> See, e.g., Letter from Genevieve Morelli and Micah Caldwell, ITTA, to Marlene H. Dortch, FCC, MB Docket No. 10-71, et al. (filed May 23, 2012), at 4.

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The Commission also should extend the contract exclusivity prohibition of the program access rules for an additional five years because it remains necessary to preserve and protect competition in the MVPD marketplace.<sup>2</sup> Although competition among video programming distributors has continued to increase since the Commission last extended the exclusive contract prohibition in 2007, incumbent and vertically-integrated cable operators remain the dominant providers in the MVPD marketplace and continue to have the incentive and ability to withhold programming from competing providers. Access to vertically-integrated programming is crucial for other MVPDs, particularly small and new entrant providers, to be viable competitors with incumbent and vertically-integrated cable operators. Extending the prohibition would help to ensure that small and new entrant MVPDs have access to vertically-integrated non-broadcast programming on a reasonable and non-discriminatory basis.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Sincerely,



Micah M. Caldwell  
Vice President, Regulatory Affairs

cc: Zac Katz  
Charles Mathias

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<sup>2</sup> See, e.g., Comments of ITTA, MB Docket No. 12-68, *et al.* (filed June 22, 2012).