DowLohnes

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September 21, 2012

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

Re: Notice of Ex Parte Communication
Cox Communications, Inc.
MB Docket Nos. 12-68, 07-18, 05-192, 12-203

Dear Ms. Dortch:

On September 19, 2012, Barry Ohlson, Vice President of Regulatory Affairs of Cox Enterprises, Inc. ("Cox"), Grace Koh, Policy Counsel for Cox, and Jason E. Rademacher and the undersigned, as outside counsel for Cox, met with William Lake, Chief of the Media Bureau, Michelle Carey, Deputy Chief of the Media Bureau, Nancy Murphy, Associate Chief of the Media Bureau, Mary Beth Murphy, Chief of the Policy Division, Steven Broeckaert, Senior Deputy Chief of the Policy Division, Marcia Glauberman, Deputy Chief of the Industry Analysis Division, David Konczal, Assistant Chief of the Policy Division, and Kathryn Berthot of the Policy Division regarding matters in the above-referenced dockets. Cox reiterated its position, as stated in comments in each of MB Docket Nos. 12-68, 07-18, 05-192, and 12-203, that the Commission should initiate a proceeding to examine and address volume discounts for cable programming. Cox's presentation is summarized in the attached handout, which was provided to the meeting participants.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. §1.1206(b)(2), a copy of this notice is being filed electronically and a copy is being provided to the office of each Commission participant in the meeting.

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

Sincerely,

David J. Wittenstein
Counsel for Cox

Attachment

cc w/attachment (via email):

William Lake
Michelle Carey
Nancy Murphy
Mary Beth Murphy
Steven Broeckaert
Marcia Glauberman
David Konczal
Kathryn Berthot

Cox Communications, Inc.
Combating Discriminatory Volume Discounts
MB Docket Nos. 12-203, 12-68, 07-18, 05-192

Unfair Volume Discounts Place Substantial Burdens on Mid-Sized and Small Cable Operators

- In its ongoing proceeding considering sunset of the program exclusivity rules and other changes to the program access provisions, the Commission received substantial comment indicating that the very largest MVPDs receive non-economic volume discounts that are unavailable to mid-sized and smaller MVPDs.
- Evidence before the Commission indicates that the largest MVPDs receive volume discounts of up to 30% off the rates available to mid-sized and smaller MVPDs.
- In today's marketplace, only a very small number of MVPDs receive the largest volume discounts, and even companies like Cox, with nearly 5 million basic video subscribers, lack the leverage to obtain comparable deals.
- As programming costs are shifted disproportionately to mid-sized and small MVPDs, their customers are disadvantaged as higher costs make it more challenging for these MVPDs to develop the innovative services at competitive prices necessary to meet the offerings provided by the largest providers.

The FCC Should Open a Proceeding To Examine and Prohibit Discriminatory Volume Discounts

- While the Communications Act permits volume discounts based on economies of scale, it does not permit discrimination against smaller MVPDs or volume discounts unrelated to the actual benefit of selling in volume.
- The Commission has received more than enough evidence to justify commencing a proceeding to examine the scope of the competitive problems caused by non-economic volume discounts and to adopt rules to combat them.
- Given its previous exercise of authority over unfair competitive practices by MVPDs under Section 628(b), the Commission should investigate MVPDs volume discounting practices.
- The Commission should require MVPDs to disclose their programming rates under a protective order to allow the Commission to determine the scope of the problem.
- Presuming the evidence demonstrates a problem with current volume discounting practices, the Commission should take remedial steps. The Commission has concluded that it has broad authority under Section 628(b) that would enable it to:
    - Establish a presumptive maximum permissible volume discount level, above which an MVPD would be required to demonstrate that the discount is tied to actual benefits realized by the programmer; and
    - Prohibit all MVPDs from entering into any programming contract that includes an impermissible volume discount.