April 4, 2013

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

Dear Ms. Dortch:

On April 2, 2013, 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, and Steven Broeckaert, Senior Deputy Chief of the Media Bureau's Policy Division, regarding matters in the above-referenced dockets. Cox reiterated its position, as stated in comments in MB Docket Nos. 12-68, that the Commission should not adopt the three million subscriber "safe harbor" for presumptive buying group membership proposed in this proceeding. 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 an electronic copy is being provided to each Commission participant in the meeting.

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

Sincerely,

/s/

David J. Wittenstein
Counsel for Cox

Attachment

cc w/attachment (via email):

William Lake
Michelle Carey
Nancy Murphy
Steven Broeckaert

COX COMMUNICATIONS INC.

BUYING GROUP REFORM AND
THE VOLUME DISCOUNT PROBLEM

MB Docket No. 12-68

April 2, 2013

- THE COMMISSION SHOULD ACT DECISIVELY TO ADDRESS THE MALFUNCTIONING WHOLESALE MARKET FOR MVPD PROGRAMMING.
  - Rapidly rising programming costs are putting substantial pressure on consumer prices for MVPD services.
  - MVPDs with the largest subscriber bases can defend their customers somewhat by using their leverage to secure lower prices; small and mid-sized MVPDs cannot.
- BUYING GROUP REFORM COULD HELP, BUT THE PROPOSED "SAFE-HARBOR" THREATENS TO WORSEN PRICING IMBALANCES.
  - Buying group reforms will work <u>only</u> if the FCC permits all small and mid-sized MVPDs to participate in protected buying groups.
  - The FCC must reject the flawed 3 million subscriber "safe-harbor" proposal.
    1. <u>The "safe harbor" proposal ignores the realities of today's programming market.</u>
       - A. Today's programming market features four MVPDs with more than 12 million subscribers.
       - B. ACA notes that the "safe harbor" would permit small MVPDs to form a buying group with 8.4 million subscribers. Such a group would be the fifth largest MVPD and would be nearly twice as large as the sixth-largest MVPD.
       - C. The proposal is premised solely on allowing MVPDs that currently participate in NCTC agreements to enjoy buying group protections; this narrow result will not remedy imbalances in today's market.
    2. <u>The rules should permit all small and mid-sized MVPDs to participate in existing buying groups or form new ones.</u>
       - A. Under that rule, all MVPDs can achieve the scale necessary to compete for the best rates.
       - B. Excluding mid-sized MVPDs from participating in existing buying groups or forming new ones will only exacerbate programming cost imbalances.
       - C. The ability to command pricing discounts depends upon the overall size of the buyer – in this case, the buying group – not the size of individual group members.
       - D. DOJ business review would prevent buying groups that would cause anti-competitive effects.
- SUMMARY: The modest benefits of buying group reform can be realized only if the commission adopts its proposals without the "safe harbor" provision. Adoption of the "safe harbor" provision would make an unfair situation even worse.