May 9, 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 No. 12-68

Dear Ms. Dortch:

On May 7, 2013, Barry Ohlson, Vice President of Regulatory Affairs of Cox Enterprises, Inc. and the undersigned, as outside counsel for Cox, met with Alex Hoehn-Saric, Policy Director, Office of Commissioner Jessica Rosenworcel, regarding matters in the above-referenced docket on behalf of Cox Communications, Inc. ("Cox"). Cox reiterated its position, as stated in comments in MB Docket No. 12-68, that the Commission should not adopt the three million subscriber "safe harbor" for presumptive buying group membership proposed in this proceeding, but instead should ensure that all small and mid-sized MVPDs can gain the protections of reformed buying group rules. Cox's presentation is summarized in the attached handout, which was provided to Mr. Hoehn-Saric.

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 the 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: Alex Hoehn-Saric

COX COMMUNICATIONS INC.

BUYING GROUP REFORM AND
THE VOLUME DISCOUNT PROBLEM

MB Docket No. 12-68

May 7, 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: (1) permits <u>all</u> small and mid-sized MVPDs to participate in buying groups; and (2) clearly prohibits vertically integrated programmers from excluding individual operators from buying group agreements.
  - The FCC must reject the flawed 3 million subscriber "safe-harbor" proposal, which would exclude mid-sized MVPDs from buying group protection.
    1. <u>The "safe harbor" limitation 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.
       - 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 aggregate size of the buying group – not the size of individual group members.
       - D. DOJ business review would prevent anti-competitive buying groups.
- SUMMARY: The modest benefits of buying group reform can be realized only if the Commission adopts its buying group reform proposals without the "safe harbor" limitation. Adoption of the "safe harbor" provision would make an unfair situation even worse.