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Vice President, Regulatory Affairs

Public Policy Office

June 13, 2013

VIA ECFS

Marlene H. Dortch

Secretary

Federal Communications Commission

445 12th Street, S.W.

Washington, DC 20554

Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 12-203

Revision of the Commission's Program Access Rules, MB Docket No. 12-68; News Corporation, The DIRECTV Group, Inc., and Liberty Media Corporation, MB Docket No. 07-18; Adelphia Communications Corporation, Time Warner Cable Inc., and Comcast Corporation, MB Docket No. 05-192

Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Inter-carrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109

Technology Transitions Policy Task Force Seeks Comment on Potential Trials, GN Docket No. 13-5

Dear Ms. Dortch:

On June 11, 2013, Mark Bowser, Chief Financial Officer, Cox Communications; Jennifer Hightower, Senior Vice President, Law & Policy, Cox Communications; and the undersigned met with Commissioner Rosenworcel and Alex Hoehn-Saric, Policy Director for Commissioner Rosenworcel. During our meeting, we discussed the issue of volume discounting as reflected in the attached outline. We further reiterated our position 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.

We also discussed the IP Interconnection proceeding and noted that as a competitive voice service provider, Cox relies on its rights under Sections 251 and 252 of the Communications Act and will continue to need those rights during the transition to IP interconnection. To that end, the Commission

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.
- Without increased flexibility in program tiering and 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.

Buying Group Reform Could Help, but the Proposed "Safe-Harbor" Threatens to Worsen Pricing Imbalances

- Buying group reforms will work only if the FCC: (1) permits all small and mid-sized MVPDs to participate in buying groups; and (2) 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.
 - The “safe harbor” limitation ignores the realities of today’s programming market.
 - Today’s programming market features four MVPDs with more than 12 million subscribers.
 - 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.
 - 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.
 - The rules should permit all small and mid-sized MVPDs to participate in existing buying groups or form new ones.
 - Under that rule, all MVPDs can achieve the scale necessary to compete for the best rates.
 - Excluding mid-sized MVPDs from participating in existing buying groups or forming new ones will only exacerbate programming cost imbalances.
 - The ability to command pricing discounts depends upon the aggregate size of the buying group – not the size of individual group members.
- DOJ business review would prevent anti-competitive buying groups.