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July 12, 2013

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Broadband Performance Measurement, GN Docket No. 12-264

Dear Ms. Dortch:

On July 10, 2013, Steve Morris and Jim Partridge of the National Cable & Telecommunications Association, Mary McManus, Jason Livingood, and Chae Chung of Comcast, Terri Natoli of Time Warner Cable, Barry Ohlson of Cox, Chris Avery and Dave Rodrian of Charter, and John Dullaghan of Cablevision (collectively the Cable Operators)¹ met with Walter Johnston, James Miller, Rajender Razdan, Padma Krishnaswamy, Sarah Weeks, Daniel Chyan, and Matt Oetting of the Office of Engineering and Technology to discuss the next round of broadband performance testing to be conducted by the Commission.

The Cable Operators discussed their ongoing efforts to increase broadband speeds on many of their most popular service tiers. We further explained that, notwithstanding significant outreach, some customers fail to respond to offers of a new modem, which may affect their ability to attain upgraded speeds.² The Cable Operators expressed concern that this “legacy modem” issue could result in inaccurate measurement of network performance for purposes of *Measuring Broadband America* testing.³ We discussed with the Commission staff possible solutions to concerns regarding existing panelists as well as the potential benefit of soliciting new panelists that own or lease modems that are capable of receiving the subscribed-to speeds. The Cable Operators also expressed their continued interest and willingness to work with the

¹ Messrs. Livingood, Chung, Avery, Rodrian, and Dullaghan participated by phone.

² Moreover, some customers have chosen to install their own modems (as contemplated by the *Open Internet Order*) and may not upgrade those modems as technology advances and/or their broadband speeds are increased. *Preserving the Open Internet*, GN Docket No. 09-191, Report and Order, 25 FCC Rcd 17905, 17943, ¶ 65 (2010).

³ As the Commission recognized in its July 2012 *Measuring Broadband America* report, the use of legacy customer premises equipment “may impede some panelists from receiving the subscribed speed from their ISP, and the presence of this equipment at a panelist’s location can prevent the ISP from controlling the broadband performance to the panelist’s home.” 2012 MEASURING BROADBAND AMERICA, July Report (OET/CGB 2012) at 7.

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Commission staff in educating consumers about the need to periodically upgrade the equipment in their homes.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: W. Johnston
J. Miller
R. Razdan
P. Krishnaswamy
S. Weeks
D. Chyan
M. Oetting