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**EX PARTE**

July 29, 2013

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

**Re: GN Docket No. 12-268**

On July 25, 2013, Andy Scott, Vice President, Engineering, Science & Technology, Diane Burstein, Vice President and Deputy General Counsel, Tim Wilkins, Legal Intern, Howard Symons, of the law firm Mintz Levin, and I met with the following staff from the Federal Communications Commission's Media Bureau: Bill Lake, Michelle Carey, Rebecca Hanson, Simon Banyai, Mary Margaret Jackson, Pam Gallant, Martha Heller, Barbara Kreisman, Joyce Bernstein, John Gabrysch, and Thomas Horan. During our meeting, we discussed the potential impact on cable operators' carriage of broadcast signals arising from the incentive auction.

Consistent with NCTA's comments in the above-captioned proceeding, we discussed how the Spectrum Act provides for cable operators to be held harmless for any costs they may reasonably incur as a result of broadcasters sharing channels or repacking. We explained that the costs for carrying broadcast stations under either of these scenarios will vary depending on the specific steps that must be taken at each cable system's receive locations (*e.g.*, headends or hubs) post-auction to receive the broadcast stations. In some cases operators will need to obtain new antennas and in other cases may be able to reposition existing ones; some changes may necessitate employing highly skilled labor; and some changes may require certain configuration changes to software. In cases where an operator already receives a broadcast station via fiber or antenna at the receive location, channel sharing of that station may not result in more than modest costs to the operator for continued cable carriage in many cases.<sup>1</sup>

We also observed that permitting broadcasters to change their community of license in ways not permitted under FCC rules at the time the Spectrum Act was passed could increase cable operators' carriage burdens in a manner that Congress did not intend.<sup>2</sup>

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<sup>1</sup> In cases where a station is unable to continue to deliver a good quality signal to the cable headend, operators may be forced to incur new costs to transport the broadcast signal via fiber, microwave or satellite distribution. *See* NCTA Comments (Jan. 25, 2013) at 19-21 (explaining potential cost factors arising from different scenarios).

<sup>2</sup> *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation"); *Whitman v. American Trucking Ass'n, Inc.*, 531 U.S. 457, 468 (2001) ("Congress ... does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions . . .").

Finally, we explained that a cable operator would be entitled to reimbursement under the Act for the reasonably incurred costs of carrying a broadcast station that has must carry or retransmission consent rights on the cable system, regardless of whether that station had previously been carried on the system. While the Spectrum Act refers to the reimbursement of the costs “to continue” to carry a broadcast signal,<sup>3</sup> that language is best understood as ensuring reimbursement for the costs of fulfilling a station’s continuing carriage rights following repacking or voluntary sharing. The right to continued carriage may be on the system currently carrying the station or it may be on a different system, if as a result of repacking or sharing the station is permitted under the Commission’s rules to move to a new location. Congress itself contemplated such a scenario when it specified that a shared station’s must carry rights would be at its shared location rather than its original location, and the same could be true for a retransmission consent station.<sup>4</sup> The right to reimbursement should likewise apply to whichever cable operator is providing the broadcaster with continuing carriage.<sup>5</sup>

Precluding reimbursement of a cable operator acting to fulfill the broadcaster’s right to carriage would create an asymmetry (broadcaster right to continued carriage at a new location, without a corresponding MVPD right to reimbursement for the resulting carriage costs) that substantially undermines the MVPD reimbursement provisions.<sup>6</sup> Such a result would be contrary to the plain intent of the Act to hold MVPDs harmless for additional carriage costs that result from repacking and sharing.

Respectfully submitted,

/s/ **Rick Chessen**  
Rick Chessen

cc: Bill Lake  
Michelle Carey  
Rebecca Hanson  
Simon Banyai  
Mary Margaret Jackson  
Pam Gallant  
Martha Heller  
Barbara Kreisman  
Joyce Bernstein  
John Gabrysch  
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<sup>3</sup> 47 U.S.C. § 1452(b)(4)(A)(ii).

<sup>4</sup> See 47 U.S.C. § 1452(a)(4) (guaranteeing a station carried on November 30, 2010, must carry rights “*at its shared [i.e., new] location*”) (emphasis added). These costs would be reimbursable whether the relocating station is being carried pursuant to must-carry or retransmission consent. See 47 U.S.C. § 1452(b)(4)(A)(ii). Even though the cable operator may already carry the station that agrees to share its channel, the carriage of another programming stream on that channel could introduce new costs for the operator. See NCTA Reply Comments (Mar. 12, 2013), at 16 n.60.

<sup>5</sup> See *United Savings Ass’n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988) (“Statutory construction ... is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . .”); *SEC v. Joiner*, 320 U.S. 344, 350-51 (1943) (provisions of a statute should be construed “in conformity with its dominating general purpose [and] in the light of context”).

<sup>6</sup> *Renteria-Ledesma v. Holder*, 615 F.3d 903, 908 (8th Cir. 2010) (ambiguous statutory provisions should be interpreted to avoid rendering a provision a “virtual nullity”).