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Jeremy M. Kissel
Admitted in DC and Florida

December 9, 2008

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

VIA ECFS

**RE: American Cable Association ("ACA"); Notice of Ex Parte Presentation; MB
Docket Nos. 07-42 and 07-198**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b), we electronically provide this notice of an ex parte presentation in the dockets listed above. On December 8, 2008, the following persons spoke via telephone with Rudy Brioche, FCC Commissioner Jonathan Adelstein's Legal Advisor:

Ross J. Lieberman, ACA, Vice President of Government Affairs
Jeremy M. Kissel, Cinnamon Mueller, Outside Counsel to ACA

During the conversation, participants expressed ACA's serious concern with the Report and Order modifying the program carriage rules and procedures that were listed as part of the tentative agenda for the next scheduled open meeting. ACA relayed its strong objection to any changes to the program carriage rules and procedures that would subject operators who have no attributable interest in programming (*i.e.*, non-vertically integrated operators)—especially those who are small and medium-sized—to complaints filed by unaffiliated video programming vendors (*i.e.*, independent programmers) based on not agreeing to similar prices, terms, or conditions for carriage as those agreed to for any other programmer. ACA also opposes modifications to the rules that would give independent programmers grounds to file complaints against non-vertically integrated programmers for failing to negotiate in good faith. As explained by ACA, non-vertically integrated operators do not have any incentive to engage in conduct that would unreasonably restrain independent programmers' ability to compete fairly that would warrant changing existing rules to permit unaffiliated video programmers to file discrimination or good faith complaints against them.

Participants also urged support for the Further Notice of Proposed Rulemaking ("FNPRM") that seeks comment on the practices of programmers and broadcasters that was also part of the tentative agenda. ACA believes that the FNPRM continues a meaningful dialogue at the

Commission on the problems in the wholesale programming market that deny consumers a wide variety of tiers, better value, and more independent programming.

Sincerely,



Jeremy M. Kissel

cc: Rudy Brioche (*via email: Rudy.Brioche@fcc.gov*)
Ross J. Lieberman