Subcommittee on Communications and Technology
House Committee on Energy and Commerce
"Reauthorization of the Satellite Television Extension and Localism Act" – March 5, 2014

Responses of Michael K. Powell, National Cable & Telecommunications Association
To Additional Questions for the Record

<u>Response to Question From The Honorable Greg Walden</u>

1. **Please describe the difference, if any, between the operation and impact of MVPD "interconnects" mentioned in your testimony and broadcaster JSAs. Please detail both the impact on buyers of local advertising as well as the impact on competitors in the sale of local advertising?**

In the marketplace for local advertising, there are significant differences between broadcast JSAs and MVPD interconnects.

An MVPD advertising interconnect is a vehicle for advertisers to purchase advertising that reaches viewers of multiple distributors across the local market through a single phone call. While local broadcasters reach 100 percent of viewers in a local television market – multiple times, because they transmit over the air and are carried on every MVPD – in today's highly competitive video marketplace, no single MVPD's subscribers comprise all, or even the majority of, the viewers in a local market. An individual MVPD's subscribership rarely adds up to more than 40-45 percent of TV households in a local television market. As a result, advertisers cannot reach the entire market by purchasing time from a single MVPD.

Advertising interconnects enable MVPDs to offer such comparable access. Without MVPD interconnects, advertisers that seek to reach an entire local market efficiently would be limited to purchasing advertising on a broadcast station. When MVPDs in a local market pool their limited local advertising inventory and offer advertisers the chance to buy advertising across all of their systems in the local market, they introduce a new competitive alternative to the broadcast purchase.

By introducing a new product to the marketplace that would not exist without the joint activity, the advertising interconnect enhances competition. And there is no corresponding reduction in competition, because participating MVPDs generally sell advertising on their own as well. The advertising interconnect simply increases competitive choices.

Because MVPD advertising interconnects introduce competitive alternatives and efficiencies to the market that otherwise would not exist, this type of joint marketing activity has long been deemed *pro-competitive*. In stark comparison, the Department of Justice has determined that broadcast JSAs are *anticompetitive* because broadcasters that could and should act individually cease acting as competitors, *reducing* competitive options for advertisers and artificially raising prices.

Moreover, there is no negative impact on competition in the market for the sale of local advertising caused by MVPD interconnects. Even in markets with MVPD advertising interconnects, broadcasters dominate local TV advertising. Because a broadcaster *individually* reaches more TV households than distributors do *collectively*, local broadcasters that sell advertising together through JSAs control *significantly* more gross ratings points in the market (the basis for purchasing local advertising). MVPD joint activities comply with settled antitrust principles and capture only a small fraction – about 10%-15% – of the advertising ratings points available in the market. The rest of those ratings points are captured by broadcasters.

Response to Question From The Honorable Anna Eshoo

1. **I hear from my constituents regularly about their frustrations with the seemingly ever higher rates they pay for video programming. In 1992, the monthly cost of cable was only around $20, and since then consumer's monthly bills have increased to well over $90. Will any of the proposals in the discussion draft reduce the monthly cost of service or give consumers greater flexibility to choose a programming package that best meets their needs?**

The cable industry is strongly committed to ensuring that its services are affordable and offer a good value proposition. The price of watching cable television per viewing hour is $0.23 – far cheaper than any other viewing entertainment option. The hourly cost to watch an HD movie from iTunes, for example, is $2.50 – over ten times as much. And while average cable bills have risen over the years, consumers today receive far more as part of their typical cable package, including hundreds of digital channels, easy access cable content both at home and "on the go" on tablets and personal devices, digital music services, foreign language networks, hundreds of video-on-demand choices, and DVR options. Importantly, every cable operator offers a range of service options, including, in most cases, a low-priced entry level tier, so subscribers can customize their package to their individual needs and interests. Most consumers choose the larger packages because they recognize the high value they are getting for their dollar.

The industry recognizes, however, that viewers are concerned about keeping costs as low as possible. There are several targeted reforms in the discussion draft that Congress could implement to promote greater affordability and fair competition.

First, NCTA members support the discussion draft's proposal to eliminate the FCC's "integration ban" rule. As a part of the current regulatory regime, the rule forces cable operators to include a separate, unnecessary video decryption component in their leased set-top boxes, adding extra cost – from $40 to $50 – and providing no added benefit to cable customers with leased set-top boxes. Repealing the integration ban would allow cable operators to offer consumers new and innovative products while removing the cost (and energy consumption) of the CableCARD and associated hardware from the leased set-top box.

Second, NCTA members support the provision of the discussion draft that would prohibit television broadcast stations in the same local market from negotiating jointly for retransmission consent unless the stations are co-owned. One of the more troubling practices arising in retransmission consent arrangements is that certain broadcast stations that are not commonly owned may utilize a variety of agreements in ways that permit separately owned local stations to coordinate the prices, terms and conditions of their retransmission consent arrangements with MVPDs.

The proliferation of video competition from DBS and telephone company providers already has resulted in increased leverage for broadcasters, because broadcasters can withdraw their programming from one MVPD and still reach consumers through multiple other MVPDs in the market. Joint retransmission consent negotiations between broadcasters that are not co-owned give broadcasters even more power in retransmission consent negotiations, putting consumers at greater risk of losing broadcast programming.

As the United States Department of Justice has stated, when broadcasters are not commonly owned, the increased leverage gained through joint negotiations has "the purpose and effect of raising the price of retransmission rights in the [local market area]," because "broadcasters' collusion succeed[s] in extracting more favorable terms … than they would have otherwise obtained." DOJ believes that retransmission consent rights must be "exercised individually and independently by broadcasters," because "when competitors in a market coordinate their negotiations so as to strengthen their negotiating positions against third parties," their conduct unlawfully restrains competition among broadcasters. FCC Chairman Wheeler recently recognized this point, noting that "joint negotiations have been documented to increase prices to cable systems," which "ultimately are borne by the consumer in the form of higher cable or Direct Broadcast Satellite fees." Banning the use of such agreements would remove this anticompetitive impact on consumer bills.

In addition, Congress should consider adding other targeted reforms to the discussion draft. Repealing the so-called "must buy" provisions – another cable-specific requirement that forces cable subscribers to purchase the "broadcast basic" tier of service as a prerequisite to buying any other tier of service – would eliminate an outdated requirement that needlessly limits programming flexibility, would reduce pressure on cable bills, and would enhance consumer choice.