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March 20, 2017

The Honorable Marsha Blackburn
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515-6115

Dear Chairman Blackburn:

The American Cable Association (ACA) represents nearly 700 small and medium-sized cable operators, rural telephone companies, and municipally-owned providers that have spent more than \$10 billion to deploy high-performance broadband networks to almost 20 million U.S. homes. As such, ACA members have a great interest in your Subcommittee's hearing tomorrow, "Broadband: Deploying America's 21st Century Infrastructure," and these providers believe they have much to contribute as you develop infrastructure policies and legislation. ACA's smaller providers are prepared to invest more and create thousands of jobs to meet their residential, business, and institutional customers' demands for even more robust networks. But, building high-performance networks is very expensive, especially in the smaller communities and rural areas that ACA members serve, and many government policies or private sector actions impose significant additional costs, thereby delaying, if not halting, new network deployments. In a recent letter to the Chairman of the Federal Communications Commission, Ajit Pai, a copy of which is attached, ACA recommended a series of proposals to address these concerns, which include the following actions –

Facilitate Access to Critical Infrastructure for Broadband Deployments.

Despite government actions over the years to facilitate access to public and private poles, ducts, conduits and rights-of-way, ACA members continue to face substantial barriers, which deter their network deployments and which deprive consumers of access to more robust broadband services. Congress should step in to ensure broadband providers can obtain access to and use of this critical infrastructure quickly and at just and reasonable cost.

Connecting Hometown America

In Unserved Areas, Provide Targeted Support Efficiently for Broadband Deployment. In high-cost areas, broadband providers may not find it economical to build robust networks using private investment alone. Here, government needs to provide support, but in doing so, it should ensure the areas are unserved and that support is distributed as fairly and cost efficiently as possible.

Reduce the Overall Regulatory Burdens on Smaller Providers. Despite having fewer resources than larger providers, ACA's smaller providers often are subject to the same regulations. Moreover, the sheer mass of regulatory burdens, even when each may be small, greatly taxes smaller providers. Accordingly, Congress must ensure burdensome regulations are not imposed on smaller providers at the outset and that regulatory requirements are reviewed regularly to determine whether they are unwarranted and unduly burden smaller providers.

Rebuilding America's infrastructure is at the forefront of ACA's policy agenda. ACA members understand what it takes to accomplish this task, and they are prepared to invest to get the job done. By adopting and implementing the policies set forth here, the federal government will enable these providers to do so more quickly and more efficiently.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew M. Polka", followed by a horizontal line.

Matthew M. Polka
President and CEO
American Cable Association

Attachment: March 7, 2017 Letter to Federal Communications Commission Chairman Ajit Pai from Matthew M. Polka, President and CEO, American Cable Association

Cc: Ranking Member Doyle
Members, Subcommittee on Communications and Technology



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March 7, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Pai:

Thank you again for inviting the American Cable Association (“ACA”) to meet in January to discuss bridging the digital divide. You clearly understand and appreciate the important role that small and medium-sized providers of broadband, video, and phone services play in meeting the needs of residents and businesses and enabling economic growth in smaller communities and rural areas. Because you have made deploying broadband to all Americans a priority, I want to give you additional background on ACA’s members and their activities in the market and describe measures that would further propel their infrastructure investments and provision of innovative services.

Over the past four decades, the communications market in the U.S. has evolved into a complex and massive ecosystem with many players. In addition to the well-capitalized, large service providers like AT&T, Verizon, Comcast and Charter, there are nearly 700 small and medium-sized cable operators, rural telephone companies and municipally-owned providers who make up ACA’s membership. These smaller providers have spent billions of dollars over the past decade to deploy high-performance broadband networks to almost 20 million homes in US markets and seized opportunities to:

- **Deploy high-performance broadband networks and services in rural areas.** The 2010 National Broadband Plan¹ identified providing rural broadband as one of the great infrastructure challenges of the 21st century. Despite the high costs of building networks in sparsely populated areas, ACA members have met that challenge. Millions of customers served by ACA members in these areas rely on networks that were built only with private capital, allowing the government to focus its limited resources where most needed.

¹ *Connecting America: The National Broadband Plan*, Federal Communications Commission, Chapter 8 (2010).

- **Bring competition and choice to urban areas.** ACA members provide cable and broadband services to more than five million homes in urban areas, challenging larger operators and giving consumers greater choice in services and price.
- **Provide services to community institutions and small businesses in small communities and rural areas.** ACA members provide high-speed Internet access, private data networks, and multiline voice products to tens of thousands of community institutions and nearly one million small businesses in small communities and rural areas.

Despite these accomplishments, smaller providers continue to face unique and substantial market challenges and need carefully balanced government policies to ensure they can serve their customers and communities. ACA therefore encourages the Commission to pursue the following policies:

Promote Broadband Investment. Although ACA’s members continue to invest in their networks, especially in small communities and rural areas, policymakers can do much to facilitate further investment and ensure all Americans are served. ACA therefore calls for the Commission to:

Apply a Light Regulatory Touch to the Provision of Broadband Internet Access Services. For years, the Commission correctly classified broadband Internet access service as an information service, declining to impose traditional utility regulation. The results of this light-touch regulatory approach were impressive: Internet Service Providers (“ISPs”) – including smaller providers – invested hundreds of billions of dollars, edge providers flourished, and consumers received higher speed and more reliable service at lower prices. This “virtuous cycle,” however, ended in 2015, when the Commission abruptly reversed course, reclassifying the service under Title II and imposing utility-style regulation.² This change harmed smaller providers most of all, making them think twice before launching innovative services and eating up their limited resources to comply with unwarranted regulations. Nowhere in the record was there evidence that smaller providers would, or even could, harm end users or edge providers. Yet, they were subject to virtually all of the burdensome requirements the Commission imposed on ISPs. Accordingly, the Commission should:

- Reverse the re-classification decision and tailor any future Open Internet regulation to ensure smaller providers are not burdened by onerous requirements that do not address any material harm. In this regard, ACA appreciates the Commission’s recent decision to relieve smaller ISPs from the burdens of the enhanced transparency requirements.³
- Reconsider the Commission’s Broadband Privacy Order.⁴ The privacy order unfairly imposes greater privacy responsibilities on ISPs than those imposed on other Internet

² *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015).

³ *Small Business Exemption from Open Internet Enhanced Transparency Rules*, Order, GN Docket No. 14-28, FCC 17-17 (rel. Mar. 2, 2017).

⁴ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Report and Order, 31 FCC Rcd 13911 (2016).

actors, including the largest edge providers that have as much, if not more, access to similar consumer data. These burdens fall most heavily on smaller ISPs.

- Continue the light-touch regulatory approach for competitive providers of business data services, including by allowing competitive providers to offer services as private carriers and not be subject to unreasonable complaints should they offer services as common carriers.

Address Barriers to Broadband Deployment. Despite numerous government actions to address problems providers face in accessing poles, ducts, and conduits and rights-of-way, ACA members continue to experience substantial barriers, which raise the cost of – and slow – their network deployments. The Commission thus should address concerns about the cost and timing of access to poles, ducts, and conduits. It also should remove barriers state and local governments impose on providers seeking to access rights-of-way and other government-owned infrastructure. You have already put some of these issues at the top of your agenda, and ACA looks forward to working with you in pursuing your Digital Empowerment Agenda and as the Broadband Deployment Advisory Committee undertakes its work.

Provide Targeted Support to Encourage Broadband Deployment in Unserved Areas. Even with light-touch regulation and the elimination of unnecessary or unreasonable barriers to broadband deployment, broadband providers may not find it economical to serve the highest-cost areas using private investment alone. Where areas are truly unserved, the government should provide support, and it should do so as fairly and cost efficiently as possible, including by establishing competitively neutral processes. The Commission has taken a series of steps to achieve this aim with its adoption and implementation of a competitive bidding process for the distribution of Connect America Fund Phase II support for unserved areas.⁵ Having a competitively neutral process that maximizes participation is especially valuable because it would allow smaller, experienced broadband providers to have equal opportunities to bring their expertise and capabilities to bear to deploy networks in unserved areas.

Additionally the Commission should refrain from adopting policies that would effectively encourage uneconomic entry into broadband markets where broadband is already being provided. ACA thus welcomes your proposal to remove the Charter merger condition requiring overbuilding in areas served by other providers offering high-speed service.⁶

Modify or Eliminate Unwarranted and Onerous Regulations, Particularly for Smaller Providers. Because regulations often have a disproportionate impact on small businesses, the Commission should regularly review them and eliminate those that are unwarranted and unduly burden smaller providers. Such review should include the following, at a minimum:

⁵ *Connect America Fund et al.*, WC Docket No. 10-90, Report and Order and Order on Reconsideration, FCC 17-12 (rel. Mar. 2, 2017).

⁶ *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6327 (2016). See also *Media Bureau Seeks Comment on Petition for Declaratory Ruling Filed by National Cable & Telecommunications Association and American Cable Association*, MB Docket No. 16-126, Petition for Declaratory Ruling of NCTA and ACA (filed Mar. 7, 2016).

- As recommended in ACA's reply comments in the Biennial Review proceeding, the Commission should modify the *de minimis* exemption from universal service contributions to exclude smaller providers from the obligation; revise downward the VoIP safe harbor, repeal unnecessary traffic study requirements, modify the Form 477 filing requirements to permit smaller providers to file annually instead of semi-annually, and modify the definition of "covered provider" to raise the subscriber line threshold so that it covers long distance voice providers that make the initial long distance call path choice for more than 250,000 domestic retail subscriber lines.⁷
- The Commission should grant the ACA/NCTA Petition for Declaratory Ruling on Electronic Notices.⁸
- The Commission should adopt the relief requested in the Sun Valley Radio Inc. and Canyon Media Corporation Petition for Rulemaking, which seeks to allow all providers subject to the EEO requirements to only use Internet sources to meet Commission EEO recruitment requirements.⁹

The Commission also should table or significantly scale back proceedings that have the potential of imposing significant burdens on smaller entities, including rulemakings examining: Broadband Network Outage Reporting;¹⁰ EAS Reform;¹¹ Video Description Expansion;¹² Accessible Emergency Information/Video Description Expansion;¹³ and User Guide Access to Closed Captioning Display Settings.¹⁴ ACA appreciates that the Chairman has already taken steps in this regard by withdrawing the proposed Set Top Box Order from circulation.¹⁵

Adopt Process Reforms to Ensure New Regulatory Requirements are Appropriate for Smaller Providers. The Commission too often focuses on issues driven by major providers and their customers, while considering as mere afterthoughts the impacts of its decisions on smaller

⁷ 2016 Biennial Review of Telecommunications Regulations, WC Docket No. 16-132, Reply Comments of the American Cable Association (filed Jan. 3, 2017).

⁸ Media Bureau Seeks Comment on Petition for Declaratory Ruling Filed by National Cable & Telecommunications Association and American Cable Association, Public Notice, 31 FCC Rcd 3595 (2016).

⁹ Media Bureau Seeks Comment on Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements, Public Notice, 31 FCC Rcd 13182 (2016); see also Media Bureau Seeks Comment on Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements, MB Docket No. 16-410, Comments of the American Cable Association (filed Jan. 30, 2017).

¹⁰ Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, New Part 4 of the Commission's Rules Concerning Disruptions to Communications, and The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 31 FCC Rcd 5817 (2016).

¹¹ Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Wireless Emergency Alerts, Notice of Proposed Rulemaking, 31 FCC Rcd 594 (2016).

¹² Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Notice of Proposed Rulemaking, 31 FCC Rcd 2463 (2016).

¹³ Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Second Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 5186 (2015).

¹⁴ Accessibility of User Interfaces, and Video Programming Guides and Menus et al., Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013).

¹⁵ Expanding Consumers' Video Navigation Choices et al., Notice of Proposed Rulemaking, 31 FCC Rcd 1544 (2016).

providers and their customers. ACA therefore recommends the following process reforms to provide greater assurance that the Commission accounts for the unique nature of smaller providers:

- The Commission should revisit its compliance with the Regulatory Flexibility Act (“RFA”), which requires the agency to examine the burdens that its proposed rules may have on smaller providers, especially since the agency has been repeatedly criticized by the Small Business Administration for its failure to do so.¹⁶ Accordingly, the Commission should conduct a formal review of how it complies with the RFA and take steps to address problems.
- The Commission should phase-in regulatory obligations for smaller providers. If the Commission does not grant smaller providers an exemption or waiver from a new regulatory obligation, it should defer their compliance for at least one year from the date the regulations take effect for larger providers,¹⁷ except where smaller providers do not request such a deferral or where the Commission does not have authority to provide such a deferral.
- The Commission should streamline the filing and consideration process for waiver petitions by smaller providers, including by committing to act on such petitions within a reasonable period of time or deem such waiver requests granted.
- The Commission should adopt Commissioner O’Rielly’s recommendation that it embrace the Administration’s Executive Order creating regulatory reform officers and agency regulatory reform task forces.¹⁸

Modernize Video Regulation to Spur Broadband Investment and Deployment. For small and medium-sized multichannel video programming distributors (“MVPDs”), the video marketplace is at best challenging and at worst a losing proposition. Many make little to no profit on traditional cable service but remain compelled to offer it because consumers continue to value receiving broadband service bundled with video service. Most importantly, the broken video marketplace is acting as an impediment for these providers to continue to make investments in their broadband service.¹⁹ ACA, therefore, recommends the Commission undertake the following:

¹⁶ See, e.g., *Independent Agency Compliance with the Regulatory Flexibility Act*, Prepared by Microeconomic Applications, Inc. for the Small Business Administration, at 34-60 (May 2013), available at <https://www.sba.gov/sites/default/files/rs410tot.pdf>; Letter from Darryl L. DePriest, Chief Counsel for Advocacy, and Jamie Belcore Saloom, Assistant Chief Counsel, Small Business Association, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 16-42 (filed Jun. 6, 2016); Letter from Darryl L. DePriest, Chief Counsel for Advocacy, and Jamie Belcore Saloom, Assistant Chief Counsel, Small Business Association, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-106 (filed Jun. 27, 2016).

¹⁷ In the case of regulations requiring approval pursuant to the Paperwork Reduction Act, the date should be the date on which the regulations would take effect following such approval.

¹⁸ Commissioner Michael O’Rielly, *Taking Stock of FCC Paperwork Burdens*, FCC Blog, Mar. 3, 2017, <https://www.fcc.gov/news-events/blog/2017/03/03/taking-stock-fcc-paperwork-burdens>.

¹⁹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-

- Amend the program access rules to enable the principal buying group used by small and medium-sized cable operators to purchase cable programming to avail itself of the same protections under the program access rules enjoyed by larger MVPDs, as Congress intended.²⁰ Prompt action on this matter – which has been pending since 2012 – will become even more important should the Department of Justice approve the merger of AT&T and Time Warner Entertainment.
- Complete the pending retransmission consent rulemaking that Congress directed the Commission to initiate in 2014 to examine the good faith rule’s totality of the circumstances test²¹ and the rulemaking examining comprehensive reform of the good faith rules that the Commission initiated in 2011.²²
- Act cautiously in considering the requests of broadcasters in their Petition for Reconsideration in the UHF Discount proceeding²³ and their Petition for Reconsideration of the Quadrennial Media Ownership Review/Local Television Ownership Rules²⁴ to ensure that changes in the broadcast ownership rules do not increase the leverage that broadcasters have over smaller MVPDs.
- Act with deliberation regarding broadcasters’ request to transmit their signals in ATSC 3.0. In particular, the Commission should prevent broadcasters from forcing cable operators to carry new channel offerings and services made possible by use of this new transmission standard, which could reduce cable operators’ ability to offer higher speed broadband or displace independent programming offerings.²⁵
- Address the problems of bundling by large programmers that have been raised in the Commission’s Diverse and Independent Programming NPRM.²⁶
- Revise the Commission’s regulatory fees so that cable operators and IPTV providers are not paying higher regulatory fees than Direct Broadcast Satellite providers to support the

126, Reply Comments of the American Cable Association on the Notice of Inquiry on Immediate Action to Accelerate Deployment, Appendix (filed Apr. 6, 2015).

²⁰ *Revision of the Commission’s Program Access Rules et al.*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 12605 (2012).

²¹ *Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327 (2015).

²² *Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 (2011).

²³ *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Petition for Reconsideration of Ion Media Networks and Trinity Christian Center of Santa Ana, Inc. (filed Nov. 23, 2016).

²⁴ *2014 Quadrennial Regulatory Review - Review of the Commission’s Broadcast Ownership Rules and Other Rules Pursuant to Section 202 of the Telecommunications Act of 1996, et al.*, MB Docket No. 14-50, Petition for Reconsideration of the National Association of Broadcasters (filed Dec. 1, 2016); Petition for Reconsideration of Nexstar Broadcasting, Inc. (filed Dec. 1, 2016).

²⁵ *Authorizing Permissive Use of “Next Generation” Broadcast Standard*, Notice of Proposed Rulemaking, MB Docket No. 16-142, FCC 17-13 (rel. Feb. 24, 2017).

²⁶ *Promoting the Availability of Diverse and Independent Sources of Video Programming*, Notice of Proposed Rulemaking, 31 FCC Rcd 11352 (2016).

work of the Media Bureau in administering MVPD regulation when all these providers impose roughly the same burdens on the Bureau and gain roughly the same benefits.

Facilitate Private/Public Partnerships for Addressing Public Safety and Homeland Security Matters. ACA members are committed to protecting the security of their customers and communities. Like larger providers, they work to protect customer information and their own businesses and networks, and they carefully and reasonably apply their limited resources, whether financial, employee or otherwise, to these complex and ever-changing risks. It is critical that they have the flexibility to meet these challenges and use their limited resources effectively. Active engagement through public-private partnerships is preferable and more effective than regulatory mandates, which reduce necessary flexibility. To that end, ACA has been represented on the Communications Security, Reliability and Interoperability Council for many years to help ensure that we are engaged on these issues, that the perspective of small providers is considered, and the work product is helpful. It is also why ACA joined the Communications Sector Coordinating Council at the Department of Homeland Security in 2015.

ACA encourages you to continue to address cybersecurity without mandates, including by modifying or eliminating the rules in the Broadband Privacy Order providing for more data breach notifications on top of what is already required under the laws of 47 states. And so ACA applauds the Commission's recent action to grant an interim stay of compliance with the new data security rules contained in the Broadband Privacy Order.²⁷

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ACA and its members appreciated working with you as a Commissioner. We look forward to your term as Chairman, and working on the issues outline above and others that may arise under your tenure.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew M. Polka", with a long horizontal flourish extending to the right.

Matthew M. Polka
President and CEO
American Cable Association

Cc: Commissioner Mignon Clyburn
Commissioner Michael O'Rielly

²⁷ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Order Granting Stay Petition in Part, WC Docket No. 16-106, FCC 17-19 (rel. Mar. 1, 2017).