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By ECFS

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

Re: Notice of *Ex Parte* Presentations in Docket Nos. 16-42, 97-80

Dear Ms. Dortch:

On August 2, 2016, Matthew Clark, Principal, Business Development Digital Products, Amazon Lab126; Matthew Chaboud, Software Development, Amazon Lab126; Vann Bentley, Policy Counsel, Amazon.com, and the undersigned (collectively, the "Amazon representatives") met with Jessica Almond, Gigi Sohn, and Louisa Terrell of Chairman Wheeler's office; John Williams of the Office of General Counsel; Scott Jordan, Chief Technologist; and Eric Feigenbaum of the Office of Media Relations. Messrs. Clark and Chaboud participated telephonically.

During the meeting, the parties discussed the pending Notice of Proposed Rulemaking ("NPRM") and its goal of spurring innovation in how consumers search, navigate, and consume the content that they purchase from their multichannel video programming distributors ("MVPDs") as well as from other content providers. The parties also discussed the recent submission from the National Cable & Telecommunications Association ("NCTA") of an alternative method using an app-based approach (the "NCTA Proposal") and the responses NCTA has provided to the Commission's questions regarding that alternative approach[1] (the "NCTA Response"). The Amazon representatives noted that the NCTA proposal provides less opportunity for innovation in the video programming space than does the NPRM, though it could foster greater consumer choice as long as unnecessary impediments to distribution are not created.

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[1] Response to Questions About Open Standards HTML5 Apps-Based Approach from Rick Chessen, National Cable & Telecommunications Association, et al., MB Docket No. 16-42, CS Docket No. 97-80 (filed July 21, 2016).

The Amazon representatives then discussed some of the specific elements of the NCTA Response. The Amazon representatives reiterated that the security of a properly implemented hardware-based DRM system is the most robust. HTML5 applications—or any native application for that matter—have no impact on this robustness.

One key shortcoming in the NCTA Proposal the Amazon representatives discussed is the proposed search function. Under the NCTA Proposal, a third-party search would be conducted without access to information regarding whether the consumer was entitled to actually view the programs found in the search. Denying third-party device manufacturers access to entitlement information creates a sub-optimal search experience, since the search results would not reflect the content to which the customer is entitled. For a consumer-friendly search to be possible, the information provided by the service discovery and entitlement flows called out in the NPRM would need to be available. Uniquely identifying channel and program data would be necessary to, at the very least, allow for metadata association via third-party data suppliers (*e.g.* Gracenote/TMS, Ericsson/FYI). Customer subscription entitlements, on the other hand, are generally customer/service specific and would require some information from MVPDs.

Further, the Amazon representatives explained that in today's device ecosystem, the terms and conditions of app stores are widely available to developers and are created with the goal of drawing as many app developers as possible to a platform. To the extent the NCTA Proposal embraces an app-based solution, it also should embrace the norms of the app store ecosystem, which include broadly written and widely available terms and conditions that facilitate rather than frustrate distribution of content across many platforms. Media services that want to serve customers on customer-chosen devices but that are unable or unwilling to accept terms relating to in-app transactions provide applications that allow viewing—but not purchase—of content.

In the context of discussing the app ecosystem, the parties also addressed the issue of how apps generally are written so that they can be compatible with as many platforms as possible. The Amazon representatives explained that app developers, particularly those from the leading online content providers, generally write apps in the native code of the device, since native code often leads to the best consumer experience. Some developers (especially smaller scale developers) may not go that route for economic or other reasons and may opt instead to use the HTML5 framework and then put a "wrapper" around it from the native device. Such an approach works adequately and may help maximize the availability of apps.

The Amazon representatives further explained that there is no *technical* reason preventing an MVPD from being able to provide its entire channel line-up for an app. That said, the Amazon representatives noted it was unclear from the NCTA Response what rights restrictions would apply to MVPDs. The NCTA Response is ambiguous in its language regarding channel availability, content distribution, and app distribution. For example, the

NCTA Response is unclear on whether customers using third-party devices would receive *exactly* the same programming as they would if they were to use first-party set-top boxes.

Please direct any questions to the undersigned.

Sincerely,

/s/ Gerard J. Waldron

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Counsel to Amazon.com Inc.

cc: Jessica Almond
Louisa Terrell
Gigi Sohn
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