



August 31, 2016

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

*RE: In the Matter of Expanding Consumers' Navigation Choices, MB Docket No. 16-42;
Commercial Availability of Navigation Devices, CS Docket No. 97-80*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Writers Guild of America, West, Inc. ("WGAW" or "Guild") submits this letter in response to the above-captioned proceedings.

The WGAW is an advocate for a media marketplace that features competition at all stages of the value chain and allows diverse stories created by writers an opportunity to reach the public. The Guild has supported the Commission's efforts to create a competitive set-top box market because it will promote greater competition in video programming and expand consumer choice. A competitive market would benefit consumers with lower prices and innovative user interfaces, and integrated set-top boxes that incorporate traditional and online content would level the playing field for content creators.

In today's highly consolidated television market, a competitive set-top box market would challenge the control that a handful of multichannel video programming distributors ("MVPDs") and media conglomerates currently exercise over what the American public can view. Because the open Internet has allowed new entrants into the video programming market, an integrated set-top box would give consumers an easier way to navigate through content and more choice in deciding what to watch.

The WGAW believes the proposal in the original Notice of Proposed Rulemaking ("NPRM") remains the most effective way of meeting the statutory goals of a competitive navigation device market called for in Section 629. As the Commission weighs the recent apps-

based proposals generated in response to its NPRM, the Guild would like to reiterate those features it believes a rulemaking designed to make the set-top box market competitive must contain in order to benefit independent programmers and facilitate greater competition and choice for consumers. Inclusion of these provisions in a regulation founded on the app-based proposal is, in our view, the only way to achieve market and consumer benefits that could have been expected under the original NPRM.

1. Parity of content on MVPD and third party devices

Third party devices cannot be competitive with MVPD-leased boxes if they do not allow subscribers to access all of the content that they have paid for and have access to with an MVPD-leased box. Limiting what content subscribers have access to when using an app on a third party device, as is the case with current MVPD apps, would impair competition in the navigation device market.

2. The navigation device market must be left open to new competitors

Limiting MVPD apps to currently available platforms needlessly restricts competition. New entrants should have the same opportunity to innovate and compete with incumbents.

3. MVPDs must provide search capability for all programming, including live and on demand offerings

Any competitive third party device must have the ability to search all of the live and video-on-demand (VOD) content that an MVPD subscriber has paid for. Allowing integrated search of content allows consumers to find the content that they want to watch and provides information for third party device recommendations.

4. Integrated user experience

Consumers should be able to access online and MVPD video programming in an integrated user interface (UI). Third party device UIs must allow consumers to connect directly to the content they have chosen through any search or selection from an electronic programming guide. Inserting MVPD app landing pages needlessly interrupts the viewing experience.

5. Local recording of content and parity of access to any cloud DVR offered by MVPDs

Consumers are increasingly watching MVPD content over longer periods of time after it is broadcast on a network, and MVPDs typically provide recording capabilities on their own leased devices. If third party devices are to be truly competitive, they must allow local recording of content and access to any cloud DVR service offered by MVPDs.

6. MVPDs must not be able to arbitrarily limit their apps to certain platforms

So long as third party navigation devices meet basic criteria, such as protecting user privacy and content security, MVPDs must either provide an app or enter into an agreement authorizing the third party device maker to create a compatible app. MVPDs should not attempt to leverage access to their apps as a means to achieve business objectives.

7. Competitive devices must have access to the same features as MVPD devices

Consumers have come to expect certain features from navigation devices such as live pausing and place-shifting. In order to compete with MVPD-leased devices, third party devices must have the capacity to provide these same features if they are offered by the MVPD.

These requirements will ensure a level playing field for navigation device competitors. At the same time, keeping MVPD supplied video within an MVPD app fully addresses industry concerns regarding content protection.

Finally, it is important to recognize the critical role oversight and enforcement must play to ensure compliance under an app-based model. As we have seen in other contexts, MVPDs have every incentive to undermine the effective operation of a competitive device market. It is therefore critical that, as an initial matter, the Commission deploy every regulatory and enforcement tool available at the outset and make it clear that it will move aggressively against violations or attempts to undermine the intended operation of the set-top box regime.

We hope that the final rules in this proceeding promote meaningful competition and innovation in the video navigation market by incorporating these vital elements. If you have any questions, please contact the undersigned.

Sincerely,

/s/

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