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September 12, 2016

By ECFS

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

Re: Written *Ex Parte* Presentation in Docket Nos. 16-42, 97-80

Dear Ms. Dortch:

On September 8, 2016, Matthew Clark, Principal, Business Development Digital Products, Amazon Lab126; Matthew Chaboud, Software Development, Amazon Lab126; Sarah Hudgins, Senior Manager, U.S. Public Policy, Amazon.com, and the undersigned (collectively, the “Amazon representatives”) spoke by telephone with Jessica Almond and Gigi Sohn of Chairman Wheeler’s office. The Amazon representatives explained that, as the Commission works toward crafting a balanced approach in the above-captioned proceeding, Amazon urges the Commission to keep in mind the following important guiding principles:

1. *The Commission’s approach should promote innovation.* Promoting innovation in the display, selection, and use of video programming available to consumers was one of the original key goals of this proceeding.¹ The Commission should remain focused on this objective as it contemplates details of a workable solution. To this end, the Amazon representatives stressed that it is important the Commission ensure the rules it develops promote innovation across as wide a retail device base as commercially and technically reasonable.²

¹ See Notice of Proposed Rulemaking and Memorandum Opinion and Order, *In the Matter of Expanding Consumers’ Video Navigation Choices, Commercial Availability of Navigation Devices*, MB Docket No. 16-42; CS Docket No. 97-80, ¶ 1.

² While Amazon’s Fire OS would clearly meet a reasonable widely deployed standard, it is not clear new entrants could overcome this threshold.

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2. *The Commission's approach to navigation device competition should be simple to administer, relying on market forces to the extent possible.* Amazon has suggested that the existing app marketplace is one in which MVPDs can meaningfully participate. Millions of app developers already work productively within this system.³ In this context, there is no need for app licensing terms to be determined by an industry group subject to Commission oversight. The process to create such a license and oversight body will delay competition and delay customers from receiving the MVPD services they already pay for on the device of their choice.

Rather, as described in Amazon's filing of August 25, 2016, customer choice can be promoted more simply and quickly by requiring large MVPDs to provide, at a minimum, a consumption-only application to widely distributed systems within one year of the final Order, under the common, transparent, and well-understood practices of appstores.⁴ This approach (i) creates an incentive for market stakeholders to cooperate voluntarily and innovate in delivering MVPD services in a unified user interface, (ii) is secure, since MVPD services can be delivered using secure hardware-backed DRM using either the NPRM protocol or the DRM agreed to by the MVPD, (iii) protects copyright and does not interfere in the contractual obligations between MVPDs and programmers, and (iv) ensures customer choice in the short-term. Notably, it also does not alter the contractual obligations between MVPDs and programmers.

If the Commission is concerned that existing app store processes may not work in the MVPD app context, then it could create a complaint process through which an aggrieved party could file a complaint about unfair terms and conditions. The Amazon representatives stressed, however, that a well-functioning market solution—and not a government-supervised industry committee—is the appropriate solution in the first instance. If examples of market failure arise, then a complaint process can be used to address related concerns.

³ Currently, a consumer can choose from over 2.1 million apps in a single app store alone. See Sarah Perez, *Upcoming App Store purge could see hundreds of thousands of apps deleted*, TechCrunch (Sept. 7, 2016), available at <https://techcrunch.com/2016/09/06/upcoming-app-store-purge-could-see-hundreds-of-thousands-of-apps-deleted/>.

⁴ See Letter from Gerard J. Waldron, Counsel for Amazon.com, Inc., MB Docket No. 16-42, CS Docket No. 97-80 (Aug. 25, 2016), at 2–3.

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Please direct any questions to the undersigned.

Sincerely,

/s/ Gerard J. Waldron
Gerard J. Waldron
Ani Gevorkian
Counsel to Amazon.com Inc.

cc: Jessica Almond
Gigi Sohn
Eric Feigenbaum
John Williams