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September 14, 2016

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TW-A325
Washington, DC 20554

Re: Ex Parte Notice
MB Docket No. 16-42 – Expanding Consumers’ Video Navigation Choices;
CS Docket No 97-80 - Commercial Availability of Navigation Devices

Dear Ms. Dortch:

On behalf of Cincinnati Bell Extended Territories LLC (“Cincinnati Bell”), we submit this *ex parte* notice of our meeting on September 13, 2016, with Marc Paul, Legal Advisor to Commissioner Jessica Rosenworcel, in connection with the above-referenced proceedings. Lisa Chandler Cordell of Breisach Cordell PLLC, along with Ted Heckmann, Managing Director of Regulatory Affairs and Assistant Corporate Secretary, and Michael Morrison, Director - Content and Consumer Product Marketing Strategy, both of Cincinnati Bell, attended this meeting and discussed the points outlined in the attached document.

Sincerely,

A handwritten signature in black ink that reads "Lisa Chandler Cordell".

Lisa Chandler Cordell
Attorney for Cincinnati Bell Extended Territories LLC

cc: Marc Paul (marc.paul@fcc.gov)

cc: Cincinnati Bell Extended Territories LLC

Cincinnati Bell Extended Territories – Fioptics
In the Matter of Expanding Consumers' Video Choices;
Commercial Availability of Navigation Devices
MB Docket 16-42

- September 8 Fact Sheet is an improvement over the NPRM but continues to suffer from much of the same flaws Cincinnati Bell discussed in its reply comments.
- Definitions of *pay-TV provider* and *pay-TV programming* are critically important.
 - Should include all video content providers and video content, regardless of transmission technology. Otherwise, no way to ensure that search engine can access all content.
 - Some pay video providers and programmers today refuse to negotiate either directly with smaller providers or with their vendors that actually develop the apps or set-top boxes on behalf of smaller providers.
 - The FCC must ensure that *all providers* that offer subscribers a navigation app have an equal opportunity to access and index *all content*.
 - Terms and conditions to be negotiated but obligation to negotiate mandated as a matter of law.
- Search engine must be made available to all providers. To the extent one of the larger providers (or a group of larger providers) develops the search engine, it must make the search engine available to all providers on proportionate rates, terms and conditions.
- To the extent the FCC exempts smaller providers (defined as those with fewer than 400,000 subscribers), the FCC needs to ensure it doesn't unintentionally impair the ability of those smaller terrestrial providers that compete head-to-head with larger terrestrial providers in the same geographic area to vigorously compete.
 - Make clear that an app offered by a smaller provider does not need to meet the standards required of larger providers (the mere provision of an app does not trigger application of the new rules).
 - To the extent a smaller provider offers a navigation app, that provider must be entitled to all of the same rights and privileges, as well as protections as those afforded to larger providers.
 - To the extent that larger providers secure rights as a matter of contract (*e.g.*, most favored nation clauses), the FCC must act to ensure a level playing field.
 - Example: TV Everywhere is licensed on a programmer-by-programmer basis. To the extent that the FCC's current proposal contemplates viewing on all types of devices, including those that are available outside of the premises, the FCC must make sure that all providers, not simply the largest providers with the greatest leverage, have access to programming outside of the premises.
 - Consideration must be given to the fact that a smaller provider may become a medium provider. To the extent a smaller provider grows enough to have 400,001 or more subscribers, that provider must have a grace period to come into compliance (*e.g.*, four years).