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September 16, 2016

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

Re: Notice of Ex Parte Presentation, MB Docket 16-42, CS Docket 97-80

Dear Ms. Dortch:

On September 14, 2016, Rick Chessen of the National Cable & Telecommunications Association; Stacy Fuller and Raquel Noriega of AT&T/DIRECTV; Alex Hoehn-Saric of Charter; Jordan Goldstein of Comcast; Jonathan Friedman of Willkie Farr & Gallagher LLP (counsel for Comcast); Jennifer Prime of Cox; and Paul Glist of Davis Wright Tremaine met with Matthew Berry, Chief of Staff to Commissioner Pai, regarding the above-referenced proceeding.

The participants discussed concerns with the concepts and approaches recently raised by Chairman Wheeler's "Fact Sheet" for addressing the issues in this proceeding.

Based on the publicly available but incomplete information that we have been able to piece together just weeks before a Commission vote, we explained our understanding that the Chairman's proposal contemplates that the Commission would require certain terms and forbid other terms in a "standard" apps license governing the availability of MVPD apps on any and all widely deployed platforms. The Commission's role would further extend to determine the validity under a new "non-discrimination" provision of the terms of any underlying agreement between a programmer and an MVPD that may affect consumers' access to and use of programming or MVPD services on such platforms. Such an approach neither respects the sanctity of programming agreements nor upholds the copyright licensing regime by which programming is distributed. The Chairman's proposal appears to anticipate that the new standard license will supplant the current, successful arrangement in which MVPDs develop and distribute apps, and would not account for the unique development environment, interface, streaming platform and encryption technology of each app platform.

We expressed concern that the Chairman's proposal to require MVPDs to provide an information flow of entitlement data is unnecessary, unlawful, and like the original unbundling proposal in the NPRM, sacrifices consumer privacy and fails to provide the consumer remedies of Sections 631 and 338 for privacy violations by the device.

We expressed concern that the Chairman's proposal would raise costs to all consumers by mandating that each MVPD build and maintain apps for an indeterminate number of retail platforms for an indefinite period of time, regardless of the nature of the device or platform.

We expressed concern that the Chairman's proposal would also constrain the very innovation that privately-licensed apps are supposed to support. Any mandate to create a standardized "entitlements" stream would require significant changes to MVPDs' networks – imposing even more costs – and introduce rigidity that retards innovation and restricts new consumer offerings. Innovation would be still further constrained under the Chairman's proposal that apps provide retail devices "with an equivalent ability to access content via the Pay TV app as they have in the set-top box," which we understand would prohibit the launch of any new feature in a set-top box unless equivalent functionality can be provided through all apps that are – or once were – "widely deployed." Requiring Commission or other licensing review and approval of proposed amendments to the standard license would also constrain innovation.

Respectfully submitted,

/s/ Paul Glist

Paul Glist

cc: Matthew Berry