



September 19, 2016

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

Re: *Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42, Commercial Availability of Navigation Devices, CS Docket No. 97-80*

Dear Ms. Dortch:

NCTA - The Internet & Television Association (NCTA) and AT&T hereby submit the attached Analysis of the Chairman's New Set-Top Box Proposal.

The Chairman's new proposal is being promoted as "apps-based" and respectful of copyright. But as details continue to surface, the Chairman's new proposal is something quite different. Among other significant policy and legal problems:

- It would intrude directly on programmers' negotiated copyright licenses and programming agreements with their distributors, inserting the Commission as the arbiter of what terms may and may not apply to distribution of content on various platforms.
- It would deprive programmers and MVPDs of the ability to directly and reliably enforce copyright, privacy, and other requirements, and put primary enforcement in the hands of an unauthorized centralized licensing bureaucracy.
- It would regulate the distribution and use of apps expansively—not just an open standard HTML5 app that could serve as a universal in-home set-top box replacement, but apps that are already deployed and in wide market use, including out-of-home TV Everywhere services distributed over the Internet.
- It would mandate that each MVPD also build and maintain apps for an indefinite period of time and for an indeterminate number of retail platforms that have shipped a minimum number of units, regardless of the nature of the device or platform or whether they support open standards, thereby imposing a substantial and apparently perpetual burden on MVPDs with no mechanism to reimburse MVPDs even for cost, and thus inevitably leading to increased prices for all subscribers (not just those using apps).

- It would require MVPDs to provide an information flow of entitlement data to third-party device manufacturers, presenting the very same privacy issues and unbundling concerns as the original unbundling proposal in the NPRM.
- It would create new barriers to innovation and defeat key attributes of apps by demanding that all MVPD networks conform their highly varied systems to new, to-be-invented open standards; by forbidding the introduction of new set-top box features unless they can be replicated on all apps platforms; and by requiring government pre-approval for any and every desired variation or amendment in licensing.
- It would impose extraordinary prohibitions limiting how MVPDs (but *not* their competitors) may assemble and deliver their services: effective bans on copyright licensing terms only if MVPDs request them; and requirements that MVPDs alone respond to subscriber searches in ways designed to discourage further exploration, that prohibit MVPDs from presenting their many clickable options for MVPD content offerings, and that effectively bypass the MVPD's user interface, thus undermining the MVPD's service as did the NPRM's original unbundling proposal.
- Beyond all this, the Chairman's new proposal suffers from numerous legal flaws each of which independently would render it invalid.

The Commission cannot avoid the serious flaws with the Chairman's new proposal simply by tweaking or removing only parts of it. For example, even if the licensing body requirements are retracted, as they certainly should be, unless the Commission also removes the entitlement data and parity mandates and the other flaws discussed herein, the new proposal cannot be sustained as a matter of law or sound public policy.

Although we are responding as best we can to the information of which we are aware, at no time has the Commission provided sufficient notice for parties to learn many significant aspects of the Chairman's new proposal or to address it adequately.

Please direct any questions to the undersigned.

Sincerely,

/s/ Rick Chessen

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