

September 22, 2016

**EX PARTE NOTICE VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TWA325  
Washington, DC 20554

Re: Notice of Ex Parte Presentation, MB Docket No. 16-42, CS Docket No. 97-80

Dear Ms. Dortch:

On September 21, 2016, Stephen H. Kay, General Counsel of Roku, Inc. (“Roku”), Steve Shannon, General Manager, Content and Services of Roku, and Trey Hanbury and Alexi Maltas of Hogan Lovells as counsel to Roku, spoke by telephone with Gigi Sohn, Counselor to the Chairman, Scott Jordan, Chief Technologist, and Jessica Almond, Legal Advisor to the Chairman.

In their discussion, Roku representatives affirmed that the multi-platform, apps-based approach described in the *Set-Top Box Fact Sheet*,<sup>1</sup> would allow for more innovation and encourage greater competition than the HTML5-only approach previously proposed in this proceeding.

Roku representatives emphasized that, as described in the *Set-Top Box Fact Sheet*, multichannel video programming distributors (“MVPDs”) should have the obligation and responsibility to build free apps that are functionally equivalent and perform similarly to the MVPDs set-top boxes.<sup>2</sup> The proposed regulations do not envision—nor should they require—distribution platforms to alter their existing platforms to support the MVPDs’ apps.<sup>3</sup>

Roku understands that to ensure that MVPD apps actually provide consumers with the same levels of functionality and performance as MVPDs’ set-top boxes, it is contemplated that the standard license will include technical appendices addressing any features unique to a particular widely deployed platform.

As Roku representatives explained, establishing platform-specific technical appendices should not be an overly complex matter. In fact, the FCC should generally defer to the platform operators’

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<sup>1</sup> See *Chairman Wheeler’s Proposal to Increase Consumer Choice & Innovation in the Video Marketplace*, Fact Sheet, at 1 (Sept. 8, 2016), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0908/DOC-341152A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0908/DOC-341152A1.pdf) (“*Set-Top Box Fact Sheet*”).

<sup>2</sup> See *id.*

<sup>3</sup> As discussed with the Commission’s representatives, the “MVPD app” could be defined as: “A discreet implementation of an on-screen user-interface that provides access to MPVD content. An MVPD app must (1) be developed using the platform’s generally available software development kit; and (2) meet the platform’s generally applicable certification requirements.”

generally available, free Software Development Kits (“SDKs”) and certification criteria, which provide a set of generally applicable rules that developers have to follow when writing for a particular platform. If the platform provider maintains an SDK and a standard certification process to test apps prior to publication on the platform and establish minimum performance criteria for such apps, the technical appendices would only have to reference the particular platform’s SDK documentation and certification process. In Roku’s case, for example, Roku makes both its SDK Documentation (which includes all the information necessary for creating a Roku channel, including design tools and sample applications), and certification process<sup>4</sup> readily available online.<sup>5</sup> Therefore, the technical appendix entry for Roku would only require a reference to the relevant pages on the Roku website. Another benefit of including a reference to the platform operator’s SDK and certification processes is that it would allow the standard to reflect small variations and adjustments that occur as a result of platform updates in the ordinary course of business without having to go through a more burdensome re-evaluation and revision of the baseline understanding that appears in the standard license. If a particular widely deployed platform provider does not make its SDK available online or follow generally applicable certification procedures, then the technical appendix should be based on requirements provided by the platform operator and address features, functions, or limitations unique to the platform. Implementing the technical appendices in such a manner would streamline administration, increase transparency and simplify compliance.

Roku also explained that a “platform” should be defined sufficiently narrowly to ensure that MVPDs only have to develop one app for each platform. In other words, a single platform should only be considered to operate on multiple device types when each device using the platform can generally operate the same set of available apps without requiring the apps to be modified or developed differently.<sup>6</sup>

Consistent with section 1.1206(b) of the FCC’s rules, an electronic copy of this letter has been filed in the above-referenced docket. Please contact me with any questions.

Sincerely,

*/s/ Trey Hanbury*  
Trey Hanbury  
Partner  
Counsel to Roku, Inc.

cc: Gigi Sohn  
Scott Jordan  
Jessica Almond

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<sup>4</sup>See Roku, *Pre-certification Check List*, <http://bit.ly/2d9WJdt> (last visited Sept. 21, 2016).

<sup>5</sup>See Roku SDK Documentation, <http://bit.ly/2clcf8b> (last visited Sept. 21, 2016).

<sup>6</sup>As discussed with the Commission’s representatives, the term “platform” could therefore be defined as “a software operating system intended to facilitate app development for video navigation and playback on televisions that does not require apps to be modified or developed differently based on which products use the platform to support video navigation.”