

November 3, 2016

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

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

Dear Ms. Dortch:

On November 1, 2016, Susan Fox of The Walt Disney Company, Kim Hulseley of Scripps Networks Interactive, Anne Lucey of CBS Corporation, Keith Murphy of Viacom Inc., Jared Sher of 21st Century Fox, Inc. and Kyle Dixon of Time Warner Inc. (participating via telephone), met with Marc Paul, Legal Advisor to Commissioner Jessica Rosenworcel, at Mr. Paul's request, in connection with the above-referenced proceedings.

During the meeting, Mr. Paul asked the programmer representatives to reiterate their legal concerns with a regulatory construct by which the Commission would assert the ability to review and/or alter the provisions contained in the third-party license that is anticipated to be created as part of the proposal before the Commission. The programmer representatives explained, as they had previously, that the Commission should refrain from exercising any and all forms of oversight or review over the terms and conditions of any license that results in the distribution of content, including any license with device manufacturers and online platforms. We noted that our legal concerns, which have not changed since the previous conversations we had on this subject with various Commission staff, extend to: Commission- or Bureau-level review of third-party license terms for any reason; any adjudication or complaint processes governing the third-party license; and any advance proscriptions (whether in the form of a rule or a required term of the license) adopted by the FCC, including any general standard of review applicable to the terms of the third-party license or any advance proscriptions of the terms that would be permitted to be included in the license negotiated by MVPDs and programmers.

In short, the programmer representatives emphasized that any involvement of any type by the FCC or any party other than MVPDs and programmers that would affect (through oversight, review, enforcement, or other action) the terms and conditions of the license is legally and practically untenable. The programmer representatives explained their earlier-stated legal position that any other alternative would create an end result in which programmers would be forced to distribute content on terms or conditions to which programmers do not agree and that would be tantamount to a compulsory copyright license, which the Commission lacks authority to impose.

