

# COVINGTON

BEIJING BRUSSELS LONDON NEW YORK  
SAN DIEGO SAN FRANCISCO SEOUL  
SHANGHAI SILICON VALLEY WASHINGTON

Gerard J. Waldron

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5360  
gwaldron@cov.com

September 8, 2015

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

**Re:** *Notice of Ex Parte Presentation in MB Docket Nos. 15-64 and 14-261*

Dear Ms. Dortch:

On September 3, David Zapolsky, Senior Vice President, General Counsel and Secretary; Brian Huseman, Director, Public Policy; and Sarah Hudgins, Manager, Public Policy, of Amazon.com Inc.; and the undersigned, its counsel, met separately with Commissioner O’Rielly and his Chief of Staff and Senior Legal Advisor Robin Colwell; and with Commissioner Pai and his Chief of Staff Matthew Berry. During the meetings, we discussed the broad range of Amazon products and services that Amazon has developed to meet the needs of customers, including Fire tablets, accessible devices for customers with disabilities that made millions of books available to visually impaired customers, and Echo, a voice-based in-home device that has been transformative for many customers.

The parties also discussed the Commission’s pending proceeding to alter the definition of “multichannel video programming distributor” (“MVPD”). We explained that competition and innovation in all sectors of the video content and distribution industry, including “over the top” (“OTT”) services, today is vibrant and growing, with many companies offering content through multiple devices and delivery technologies and investing in high quality programming, all to the benefit of consumers. We discussed how this investment in new creative and award-winning content by multiple companies, which is attracting a large and growing viewership, is occurring naturally in the marketplace, with little or no government involvement. In view of this dynamic, healthy, and rapidly changing technological and competitive environment, we questioned the need for government intervention in this market segment, expressing concern that the rules proposed by the Commission would inhibit innovation by imposing on OTT services regulatory burdens created long ago that are neither relevant to nor tailored to address this new vibrant industry, without any of the competitive benefits (including the attendant statutory copyright licensing) that were envisioned when the rules were originally drafted decades ago.

## COVINGTON

Ms. Marlene H. Dortch  
September 8, 2015  
Page 2

We also cautioned the Commission to be mindful of potential unintended consequences arising from an expanded definition of MVPD. For instance, Amazon owns Twitch.tv, a live streaming video service focused on video gaming. Content on Twitch can be viewed live (*i.e.*, on a linear basis) or on demand. We raised the question whether Twitch could be considered a “channel” under the Commission’s proposed rule, thereby making it an MVPD subject to regulation. If so, we noted how such unintended consequences could be highly damaging, inadvertently causing the government to significantly distort a new and alternative video segment that is growing and flourishing without any government intervention.

The parties also discussed the customer experience online and how Fire TV enables customers to find programming of some services using voice commands. In that context, we discussed the final report from the Downloadable Security Technical Advisory Committee (DSTAC), urging that the Commission approach this issue from the standpoint of giving service providers technological flexibility to create the best possible customer experience.

Please direct any questions to the undersigned.

Sincerely,

*/s/ Gerard J. Waldron*

---

Gerard J. Waldron  
*Counsel to Amazon.com Inc.*

cc: Commissioner O’Rielly  
Robin Colwell  
Commissioner Pai  
Matthew Berry