

February 11, 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 15-64

Dear Ms. Dortch:

On February 9, 2016, the following representatives of the Future of TV Coalition met with Chairman Tom Wheeler, Gigi Sohn, Louisa Terrell and Jessica Almond. The representatives also held separate meetings that same day with Commissioner Ajit Pai, Matthew Berry and Max Staloff; and with Commissioner Jessica Rosenworcel and Marc Paul.

*Future of TV Coalition Representatives*¹

- Future of TV Coalition Co-Chair: Alfred Liggins III, CEO of TV One
- Future of TV Coalition Co-Chair: Nomi Bergman, President of Bright House Networks
- American Cable Association: Matt Polka, President and CEO
- AT&T: Bob Quinn, Senior Vice President - Federal Regulatory
- Hispanic Technology and Telecommunications Partnership: Rosa Mendoza, Executive Director
- Motion Picture Association of America (MPAA): Chris Dodd, Chairman and Chief Executive Officer, and Neil Fried, Senior Vice President Government and Regulatory Affairs²
- National Cable & Telecommunications Association (NCTA): Michael Powell, President and CEO, and Paul Glist, counsel

¹ The Future of TV Coalition is a diverse group of over sixty programmers, content creators, civic groups and television providers promoting market-based innovation that offers TV viewers an unprecedented volume of high-quality, diverse programming available on an expanding universe of devices and services, while opposing unnecessary technology mandates that would threaten this innovation and diversity.

² Senator Dodd attended the meeting with Chairman Wheeler. Mr. Fried attended the meeting with Chairman Wheeler and Commissioner Pai.

We discussed the following matters:

Content creators, producers, networks and MVPDs are enabling consumers to receive their services on hundreds of millions of popular retail devices. No members of the Future of TV Coalition are trying to protect set-top boxes or keep subscribers “chained to their set-top boxes,” as some have suggested. All of the top MVPDs and content providers want consumers to enjoy MVPD services on their own devices and have developed the apps to support 460 million popular retail devices such as iOS and Android tablets, smartphones, smart TVs, streaming set-top boxes like Roku, and game consoles. That means that twice as many retail devices support MVPD services as there are leased set-top boxes.³ Content creators, producers, networks and distributors are moving in the same direction that Chairman Wheeler is seeking: more platforms and more retail choices for receiving multichannel service. The DSTAC technical group deliberated for the better part of the year on the best way to get there and in the end did not have a consensus proposal but laid out two potential approaches – (1) the apps approach that has been embraced by consumers and which keeps expanding in the marketplace, and (2) the approach reflected in the proposal on circulation, which has not been invented yet and would require years of work to be developed, tested, implemented and proven to be viable across MVPDs.

Rather than promoting competition in set-top boxes, the proposed approach would create a federal rule for others to siphon the creative work of others for free, appropriating pay-TV content and repackaging select portions of it for their own commercial exploitation through fees, advertising, and data collection without having to enter into agreements with the creators like others in the marketplace must do. The proposal goes beyond the scope of section 629, which promotes getting the multichannel services offered by MVPDs onto retail devices. It does not authorize the Commission to unbundle cable services or to create a compulsory license for copyrighted content to be reused and repurposed in order to create alternative video services.

This approach does not protect creative work the way copyright licenses do. Licensed distributors of copyrighted content operate under carefully negotiated agreements that protect creative works, networks and brands, and compensate creators and entrepreneurs for their work. Licensed distributors don’t put our licensed content next to stolen content, the way a Google search does. Licensed distributors follow rules about channel placement, brand protection, advertising and appropriate search. The supporters of the Google proposal make clear they do not plan to follow those limits. There is nothing in the factsheet that makes them follow those limits: instead, the proposal removes the very technical safeguards that protect those licensing agreements.

³ Much disinformation is circulating about set-top profits. AT&T and others reported to Senators Markey and Blumenthal that the first box is free, and yet still they reported that AT&T charges for them. A complete review of flaws in that report and one by the CFA is posted [here](#).

There is no reason to interfere with content licensing in a market that is flourishing, not failing. Content providers have also embraced apps and new distribution models, with content providers offering their individual services online via apps, licensing content to over-the-top companies such as Amazon, Hulu, Netflix, Sony Vue, Sling TV, and Microsoft, and supporting more than 115 lawful online sources.

The proposed approach doesn't add options and leave everything else undisturbed: it undermines intellectual property, anti-piracy efforts, and investment incentives. Copyright licenses granted to licensed multichannel distributors do not allow the distributors to hand off content for others to exploit or create new works. By simply granting a copyright license to Google to take a competitive service and repackage it as their own, without ever having to negotiate for it, the Commission would undermine the legal framework and incentives that created this programming in the first place and that led Amazon and Netflix to produce still more original content.

The proposal is inviting copyright infringements far beyond TiVo. TiVo was about making a box that could interoperate on cable systems for one-way linear cable channels, and it was using the best available tools and licenses of the time. It agreed to operate under a license not to impair cable operators' service, but even that has not sufficed for one-way services. It has not stopped TiVo from overlaying ads on top of broadcast signals carried on cable or streaming signals out of the home without license. This one-way linear arrangement was from the outset designed as a transitional approach to apps-based solutions that would deliver and protect the cable operator's service and all the underlying license rights in today's far more complicated market, but that required protection is missing from the Commission's proposed approach.

The proposed approach undermines the economics of minority and diverse networks and hands off their value to Silicon Valley. The minority entrepreneurs who have built new programming networks have worked hard to produce popular multicultural content, to build these businesses and negotiate licenses that protect their placement, their advertising, and the license and ad fees they receive to pay for the hard work of creating high-quality programming networks. Handing those networks over for exploitation by unlicensed distributors like Google would dilute their value and preclude these networks from being compensated for these new uses. Nothing in the factsheet prevents tech companies from adding or overlaying advertising, dropping diversity networks, or relegating them to the remote reaches of a search algorithm. If every deal a programmer reaches with an MVPD means that it is free to anyone else, programmers will be hard pressed to maintain license and advertising fees. The economics of online networks are also very different from television networks: Internet advertising commands far lower advertising rates than rates paid to full-fledged television networks, and Internet gatekeepers like Google's You Tube take four times or more of advertising revenue than MVPD networks do. Turning licensed content over to be exploited in the Internet advertising market devalues television advertising and undermines the economics that fund high-quality commercial content.

Silicon Valley does not need a free license to minority and diverse content to promote online networks. Ever since programing has been available online, these tech companies have been able to seek out, promote, pay for and feature independent or diverse programmers on their retail boxes, but they have not distinguished themselves with diversity on any front. The proposed approach would undermine the TV rights of minority and diverse networks and threaten their viability – all in the supposed service of offering new audiences to diverse online programmers. If tech companies want to promote independent or diverse programmers, they should do it the old-fashioned way and negotiate.

The proposal weakens consumer privacy beyond FCC fixing. The consumer privacy protections provided under Title VI are at special risk under the proposed approach. The threat to privacy does not go away with a manufacturer self-certification to some lesser privacy regime. A certification does not subject a manufacturer to the robust privacy protections that apply to MVPDs under the Communications Act. And even if the manufacturers certified that they would meet the obligations of each MVPD to its consumers, there is no comparable consequence to them for breaking the promise. Congress gave a Title VI private cause of action in federal court for classes of subscribers to get statutory damages if cable and satellite providers break privacy obligations, but the FCC does not have the authority to expand those same consumer protections to other providers. The proposal is inviting more data mining, more overlaid ads and more privacy intrusions as we have seen with Vizio TVs collecting and sharing users' viewing habits, and Google breaking its promise to show only family-friendly ads in YouTube Kids and to protect student data collected in its Google for Education initiative.

The market is already serving consumer-owned devices and helping consumers see all their choices. All the top MVPDs are using the most modern techniques from open standards bodies (like DLNA, RVU, and W3C) and big platforms (like iOS and Android) in an ongoing process to keep expanding the reach of their services to consumer-owned devices. For example, RVU is an open standard that already enables retail devices to receive services without needing to add more set-top boxes. MVPDs and networks have developed the apps to support hundreds of millions of consumer-owned devices and without the need for a set-top box. Apps allow rapid innovation on all sides—in licensed services, in networks, in retail platforms, and in online services. The market is also creating new search tools to help consumers see their many choices, including Roku's cross-app search, web sites like MPAA's wheretowatch.com and others, business-to-business agreements with TiVo, and "smart remotes."

The proposal does not create competitive parity. Today, Netflix, Hulu, Amazon and other content providers operate within their own apps and do not permit others to search inside those apps or repurpose their programming for other uses -- unless they negotiate or chose such arrangements. Under the proposal, *only* MVPDs would be compelled to permit Google to search within and reuse MVPD content, while Netflix, Hulu, Amazon and other online content providers would not. The promise that the proposal will allow consumers to search across all content cannot be fulfilled with such discriminatory rules.

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Consumers will end up paying. While some may claim that the proposal is all “off the shelf” technology, they are ignoring the actual differences in MVPD architectures, networks and capabilities. In reality, someone will need to develop and pay for new technologies and specifications, intellectual property rights, testing and implementation for this proposal, and that means years of work with MVPD subscribers bearing the costs, whether they want this approach or not. As a practical matter, whether or not the proposal *explicitly* calls for network redesign or a new in-home government-designed box that consumers would have to lease from their MVPD, the functional demands of the proposal require both, and will end up requiring more leased equipment and more electrical bills and greenhouse gas emissions for the power to run them.

Smaller MVPDs and their customers will be particularly burdened by the proposed approach. For the hundreds of smaller cable and broadband providers, some of which are still operating analog or hybrid analog/digital systems and are years away from transitioning to IP, the proposal would require the investment of millions of dollars they can ill afford and which should be going to network enhancements and broadband expansion to meet actual consumer demand.

If you have any further questions, please contact me.

Respectfully submitted,

/s/ Paul Glist

Paul Glist

cc: Chairman Tom Wheeler
Commissioner Ajit Pai
Commissioner Jessica Rosenworcel
Jessica Almond
Matthew Berry
Marc Paul
Gigi Sohn
Max Staloff
Louisa Terrell