

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Expanding Consumers' Video Navigation Choices	)	MB Docket No. 16-42
	)	
Commercial Availability of Navigation Devices	)	MB Docket No. 97-80
	)	

**COMMENTS OF THE DIGITAL MEDIA ASSOCIATION**

Gregory Alan Barnes  
Digital Media Association  
1050 17<sup>th</sup> Street N.W. – Suite 220  
Washington, DC 20036

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## **INTRODUCTION AND SUMMARY**

The Digital Media Association (“DiMA”) applauds the Commission for initiating this proceeding to bring much-needed changes in the navigation device market. The carefully-balanced rules proposed in the NPRM will advance the Commission’s longstanding goals of promoting competition and consumer choice, while protecting the public interest. Although the content protection concerns the NPRM identifies are important, they are demonstrably solvable, and the proposed rules present no threats to the protection of consumer privacy.

DiMA comes to this debate as the representative of the digital media industry: webcasters, online media, digital services, and technology innovators. DiMA’s member companies offer products and services that have revolutionized consumer media and democratized access to media and information by attracting millions of viewing hours online to new, existing, and repurposed content that is now available when consumers want to watch it. The innovative products and services that DiMA member companies bring to market have changed—and will continue to change—commerce and daily life, as well as how Americans obtain and enjoy news, entertainment, and sports. As a result of the tremendous innovation of DiMA members, consumers are able to enjoy a wide variety of content on a growing number of devices, both at home and on the go. DiMA believes this vital perspective should inform the Commission’s next steps as it contemplates the evolution of the set-top box market and video programming more generally.

## DISCUSSION

### **I. The Proposed Rules Will Advance the Commission’s Longstanding Goal of Promoting Competition and Consumer Choice**

As the NPRM acknowledges, competition in the navigation device market is essentially nonexistent: almost 99 percent of consumers access MVPD service offerings to which they subscribe through a set-top box leased from their pay TV provider.<sup>1</sup> There are, consequently, few incentives driving the continuous development of newer, more consumer-friendly navigation devices, software or related applications. While, Section 629 sets forth Congress’s intent that competition and consumer choice exist in the navigation device market, the current market falls far short of this standard. The time has come for consumers to be able to choose among devices that best meet their video watching and search needs—and for consumers to be able to retain their device of choice even when switching service providers.

The proposed rules will create the competition necessary to generate new technologies that can offer scores of innovative and useful functionalities for users. For instance, such technologies can help consumers compare costs for devices, applications, and video content, allowing for selection of viewing experiences and prices most effectively tailored to users’ needs. These new technologies also can enable consumers to more easily search for and locate new content. New navigation solutions can, for example, provide an integrated platform for accessing content available on MVPD services along with content made available by online distributors of video content. By improving the process for discovering new content, these new technologies also can help programmers reach new audiences and create additional demand for

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<sup>1</sup> See Notice of Proposed Rulemaking and Memorandum Opinion and Order, In the Matter of Expanding Consumers’ Video Navigation Choices, Commercial Availability of Navigation Devices, MB Docket No. 16-42; CS Docket No. 97-80, ¶ 13 (hereinafter “NPRM”).

their programming. The proposed rules thus catalyze the creation of valuable benefits to multiple players across the video programming ecosystem.

Injecting competition and choice into the navigation device market will bring it into alignment with more modernized, parallel communications service markets. Among the markets in the communications ecosystem, the navigation devices market stands out for this lack of competition. In both the wireline and wireless broadband and telephony contexts, consumers can select the device of their choosing from a wide array of options. The principle that consumers should be able to switch seamlessly among service providers without having to change their device of choice has been a hallmark of old-fashioned telephone customer premise equipment for over four decades. More than twenty years after Congress adopted a similar policy objective for cable companies' subscribers in Section 629, these same consumers are still locked into leasing the modern equivalent of a black rotary phone. It is high time for users to enjoy the same choice in navigation devices and applications that they enjoy in other communications services.

## **II. Content Protection Concerns Are Important But Solvable**

In the past, issues related to content protection presented obstacles to reforming the navigation device market. The NPRM underscores that unaffiliated vendors must implement content protection to ensure that the security of MVPD services is not jeopardized, and must respect licensing terms regarding copyright, entitlement, and robustness.<sup>2</sup> DiMA agrees these issues are important but emphasizes that they do not present insurmountable obstacles: current technology offers solutions to ensure such concerns are adequately addressed.

For instance, DiMA's member companies have a long history of successfully delivering premium content to consumers without any content protection mishaps. DiMA members continue to adhere to digital rights management practices that meet studio-level standards in their

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<sup>2</sup> See NPRM at ¶ 29.

customary handling of premium content for their services. This successful track record demonstrates that the technology necessary for effective content protection already exists and is being effectively implemented. Those seeking to enter the content navigation device market can use the same types of effective technology that DiMA members are using today.

To be sure, content protection and security concerns remain paramount, and the development of protocols that best serve consumers deserves the highest level of attention from players across the video programming ecosystem. DiMA believes, however, that the NPRM has offered a well-balanced and effective security framework that capitalizes on the benefits of modern technology. Indeed, the technology necessary for addressing the security concerns the NPRM outlines already exists, and security objectives for new navigation solutions can be achieved. DiMA's members participate in numerous standard setting bodies across various sectors and industries, and in the navigation device context, DiMA's members stand ready to participate in a standard setting process that is open, objective, and achieves an acceptable outcome for all interested parties. With regard to content protection or new rules for navigation devices, in particular, it is important that the Commission avoid taking any action that would adversely affect the ongoing development of standards designed to promote the widespread availability of content delivered via live or on-demand video streaming services.

### **III. The Proposed Rules Would Not Jeopardize Consumer Privacy**

Finally, DiMA underscores that the proposed rules would not create any new risks to consumer privacy. Although new entrants to the navigation device market would not be subject to the same legal framework that governs the privacy practices of MVPDs, they are subject to an equally protective legal framework. Sections 551 and 338 of the Communications Act impose obligations on MVPDs regarding the collection, use, and distribution of consumer data. The

Federal Trade Commission is empowered to pursue enforcement actions against companies—including non-MVPDs, such as companies that are members of DiMA—for failing to adhere to representations made in privacy policies about the collection, use, and distribution of consumer data. Accordingly, while the legal framework that applies to would-be new entrants to the navigation device market is different from the one that currently applies to MVPDs, its protections are just as strong. Customers of new entrants to the navigation device market, therefore, would effectively receive the same level of privacy protection as they would if they were customers of MVPDs. Given this parity in protection, the new rules would not undermine consumer privacy. Hence, privacy concerns need not bar consumers from having the choice in the navigation device market that they deserve.

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### **CONCLUSION**

The video programming ecosystem generally has evolved significantly in recent years, offering tremendous value to consumers. The navigation device market stands out as the one component of this ecosystem that remains trapped in the past. For the reasons outlined above, the Commission should proceed with its proposed approach to modernizing this market. Creating competition and consumer choice for navigation will generate numerous benefits for both consumers and programmers. Content protection, security concerns and consumer privacy concerns do not present problems that cannot be or are not already adequately addressed. DiMA applauds the Commission for initiating this proceeding and looks forward to working with other concerned parties throughout the rest of the process.

Respectfully submitted,  
/s/ Gregory Alan Barnes  
General Counsel  
Digital Media Association  
1050 17<sup>th</sup> Street, N.W. - Suite 220  
Washington, DC 20036  
gbarnes@digmedia.org

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