

May 9, 2016
Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: MB Docket No. 16-42 - In the Matter of Expanding Consumers' Video Navigation Choices

CS Docket 97-80 - Commercial Availability of Navigation Devices

Dear Ms. Dortch:

Public Knowledge respectfully submits this *ex parte* letter in the above-referenced proceedings. On May 5, 2016, John Bergmayer, Senior Staff Attorney at Public Knowledge; Kate Forscey, Associate Counsel for Government Affairs at Public Knowledge; Kim Bayliss of Grayling Consulting, representing the Consumer Video Choice Coalition; and John Howes, Legal Fellow from CCIA met with David Grossman, Chief of Staff and Media Advisor to Commissioner Mignon Clyburn, regarding the above-captioned proceedings.

Specifically, we emphasized that a competitive video device and app marketplace is likely to reduce energy costs and increase the energy efficiency of devices available to consumers. This is contrary to recent concerns regarding the potential impact the Commission's proposal may have on efforts to reduce consumer electronics energy consumption. We believe that a competitive device market will produce innovative new devices, building on the nascent market of existing low-energy devices such as Chromecast and AppleTV. This increased competition will also incentivize existing device providers to find more energy-efficient ways to operate.

We also explained that the current copyright concerns are an attempt at misdirection by opponents of the Commission's proposal, in an effort to delay progress of this important proceeding. With regards to licensing and distribution, those concerns are unfounded, because MVPDs simply cannot ask for a contract to do something that is already illegal. To the extent that concerns about piracy in the digital ecosystem are legitimate, they are irrelevant to any particular qualities of the competitive video device marketplace that this proceeding seeks to accomplish. Rather, those concerns arise from a discomfort with the potential for piracy presented by *any* device that connects to the Internet.

Concerns about advertising interference are similarly misplaced. First, the idea that third-party device creators would or even could disrupt advertising within consumers'

pay-TV programming is unfounded, as it is not technically feasible for them to do so. Second, even if a third party could do so, any interference with content being provided would constitute infringement - which would include manipulating the advertising. All told, the majority of the objections raised by opponents with regard to content interference are already protected or addressed under other provisions of the law.

Finally, we reiterated our view that the objective of the FCC's set-top box proceeding is to expand consumers' ability to access content that they lawfully pay for, by accessing it through more devices. It is hard to see how giving consumers greater access to lawful content would increase their appetite for unlawful content. Rather, the FCC's proposal is likely to disincentivize illegitimate content and potentially attract *more* consumers to pay for lawful content, whether accessed through traditional pay-TV, or over-the-top services.

Sincerely,

/s/ Kate Forscey
Associate Counsel for Government Affairs
Public Knowledge

Cc: David Grossman