

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	
Expanding Consumers' Video Navigation Choices	MB Docket 16-42
Commercial Availability of Navigation Devices	CS Docket 97-80

**REPLY COMMENTS OF
THE AMERICAN ASSOCIATION OF ADVERTISING AGENCIES**

The American Association of Advertising Agencies (“AAAA”), on behalf of its members, hereby replies to comments filed in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) regarding allowing competitive consumer electronics manufacturers and other developers to make set top box devices and software that can provide access to multichannel video programming.

The AAAA, founded in 1917, is the national trade association representing the American advertising agency business. Its nearly 500 members, comprised of large multi-national agencies and hundreds of small and mid-sized agencies, maintain 2,000 offices throughout the country. Together, AAAA member advertising agencies account for nearly 80 percent of all national, regional, and local advertising placed by agencies in newspapers, magazines, radio and television in the United States. AAAA is dedicated to the preservation of a robust free market in the communication of commercial and noncommercial ideas.

AAAA endorses the initial comments filed by the Association of National Advertisers (“ANA”), which address the very serious and negative impacts of the proposed rules on advertising practices and on consumers, including expectations regarding marketing, availability and diversity of content, and cost of services.

As the ANA emphasized in its comments, the advertising industry is a critical component of the American economy, as, among other things, it provides “employment opportunities and job diversity, improv[es] consumers’ standard of living through informed decision-making, ensure[s] the survival of media useful for communications, creat[es] healthy competition among products and otherwise benefit[s] the economic development of the nation.” ANA Comments, Section II at page 2.

AAAA shares the ANA’s view that the advertising industry and consumers would be negatively impacted by the proposed rules. Importantly, the integrity of the transactional process between advertisers and those who distribute their advertisements would be disrupted, were the proposed rules to go into effect. These advertising agreements are heavily negotiated, the parties rely on the contractual terms contained in these agreements (such as terms relating to compensation, valuation, adjustments for failure, and dispute resolution, *see* ANA Comments, Section III, page 7), and all parties make decisions based on the scope of these agreements. This process is fundamental to the functionality and efficacy of the advertising industry overall, which ultimately benefits consumers, who enjoy the content and services that are supported by advertising.

Introducing a third party into this process will result in confusion, uncertainty and unpredictability. Under the proposed rules in their current form, there would be no guarantee that advertising agreements, going forward, could ensure that advertisers’ advertising would

reach all of their intended consumers. Indeed, advertisers would have no way of pinpointing who is responsible for the integrity of its advertising and would likely have to develop, at great cost to the advertisers themselves, monitoring and auditing processes to determine the frequency, content and messaging accuracy, location and efficacy of their advertising. Given that viewer-based content is heavily subsidized by advertising, this uncertainty would undoubtedly affect the consumer, as it would “raise consumers’ costs and reduce their ability to access information.” ANA Comments, Section III at 9.

AAAA also agrees with the ANA’s position that, despite the Commission’s statement in paragraph 80 of the NPRM that it “[does] not currently have evidence that regulations are needed to address concerns . . . that competitive navigation solutions will disrupt elements of service presentation . . . replace or alter advertising, or improperly manipulate content,” these issues are not fictional, nor can they be easily “fixed” as proponents of the NPRM, such as Google, seem to suggest. The ANA’s example regarding TiVo (i.e., its practice of overlaying its own messaging or placing competing advertising messages over the promotional messaging of cable operators) is well-taken. Indeed, nothing in the proposed rules would prevent a third-party set top box distributor from engaging in such practices.

These concerns are particularly relevant to AAAA because of the unique position our constituents face as the primary negotiators, interpreters and facilitators of these contractual agreements. An advertising agency’s role is to negotiate and, ultimately, to abide by these contracts in the best interests of its clients, using its knowledge, experience and expertise. The changes that would occur as a result of these proposed rules would add a layer of disruption to the process, not only on advertisers and consumers, but also on advertising agencies, given that they are on the front line of the process. With the uncertainty and instability that the proposed

rules would bring, advertising agencies will inevitably find themselves caught in the middle of this instability.

Lastly, the proposed rules may also have unintended privacy and data collection consequences upon all involved in the advertising industry as well as consumers. Such a proliferation of vendors, all of whom will be gathering data via their set top boxes and software, will no doubt result in a higher likelihood of misuse of data and less transparency and control over the collection of data, not only for advertisers with respect to the data relating to their campaigns, but also for consumers, making it more difficult for consumers to monitor and control who is capturing their data and how that data is ultimately used.

Thus, for all the reasons stated above, AAAA joins the ANA and others in urging the Commission not to take favorable action on the above-captioned NPRM.

Respectfully submitted,

**THE ASSOCIATION OF AMERICAN
ADVERTISING AGENCIES**

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Filed: May 23, 2016