

May 23, 2016

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: Notice of *Ex Parte* Communication in
MB Docket No. 16-42 and CS Docket No. 97-80**

Dear Ms. Dortch:

On May 19, 2016, representatives of Gracenote met with Commission staff to discuss the Commission's set-top box proceeding. Present on behalf of the Commission were Scott Jordan, Chief Technology Officer; Michelle Carey, Nancy Murphy, Mary Beth Murphy, Martha Heller, Brendan Murray, and (by telephone) Kathy Berthot of the Media Bureau; and Sherwin Siy of the Wireline Competition Bureau. Present on behalf of Gracenote were Eddie Lazarus and Sal Karottki of Gracenote; and Scott Blake Harris and Michael Nilsson of Harris, Wiltshire & Grannis LLP.

As with our comments filed on April 22, our discussion focused on only one aspect of the Commission's set-top box proposal—the proposed requirement that MVPDs pass through a proprietary ID number offered by one of Gracenote's competitors. We described why any such requirement would be unnecessary and unwise.

- We described the service Gracenote and its competitors provide, and the competitive nature of the market for “metadata.” We described how Gracenote provides its services to all comers, including third-party set-top box manufacturers, at reasonable and nondiscriminatory prices. By nondiscriminatory, Gracenote does not mean that it charges all customers the same price, since it negotiates for different combinations of services and terms with each customer at market rates. Rather, it does not favor one class of customers (like MVPDs) over other classes of customers (like online providers).
- We explained that, since programming metadata, including the proprietary ID number at issue here, is readily available for purchase by anyone, Commission action in this area is unnecessary.

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- We noted that the Commission’s specific proposal—to require MVPDs to provide third parties with a proprietary and non-universal program ID number belonging to one of Gracenote’s competitors—simply will not work. MVPDs other than clients of that competitor would have nothing to pass through. And it should be unthinkable to require MVPDs to subscribe to one competitor in the market in order to “universalize” metadata ID numbers.
- We explained that the Commission need not—and should not—require MVPDs to pass through any of the ID numbers that they receive from the competing providers of programming metadata. Such a requirement would violate Gracenote’s (and probably its competitors’) contractual, intellectual property, trade secret, and constitutional rights. It would also likely hinder the functionality of the very devices the Commission seeks to protect.
- We indicated there are alternative methods by which third-party devices might be able to “match” MVPD programming to the metadata and databases provided by Gracenote and its competitors. For example, third-party devices could license services directly from Gracenote and its competitors. Gracenote agreed to provide additional information on these methods in subsequent filings.

Should you have any questions, please contact me.

Respectfully submitted,

/s/

Scott Blake Harris

Counsel to Gracenote

Cc: Meeting Attendees