

June 2, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: MB Docket No. 16-42  
Expanding Consumers' Video Navigation Choices**

**CS Docket No. 97-80  
Commercial Availability of Navigation Devices**

**Ex Parte Written Communication**

Dear Ms. Dortch:

Entravision Communications Corporation ("Entravision"), the parent company of Entravision Holdings, LLC, the licensee of numerous Spanish-language broadcast television stations, wishes to express its support of the Commission's efforts in the above-referenced proceeding to introduce competition into the set-top box market currently dominated by multichannel video programming distributors ("MVPDs"). *See Expanding Consumers' Video Navigation Choices; Consumer Availability of Navigation Devices*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 31 FCC Rcd 1544 (2016) ("NPRM").

During Entravision's evolution from a small broadcaster serving the Latino community to its current status, Entravision has had to deal with MVPDs in securing carriage of its stations. Throughout this time period, Entravision has witnessed firsthand MVPDs exercising "gatekeeper" control over the programming available to pay television subscribers in the United States. This "gatekeeper" function often exhibited itself as MVPDs either excluding, restricting, or grudgingly offering limited opportunities for the pay television carriage of diverse, minority-focused program content in their channel lineups, much to the detriment of minority subscribers, and especially Latinos, who sought some programming responsive to their needs and interests.

The exceptions to this exclusion prove the rule, and in Entravision's opinion, the open video programming marketplace contemplated by the NPRM can be expected to be more hospitable to viewers and content providers of independent and minority-focused programming than the current set-top market dominated and defined by MVPD control. As robust minority viewership of online video programming indicates, minority viewers and content creators are ready to

embrace an integrated video programming universe beyond the fixed horizon of the MVPD provided set-top box and those who obtain their video connectivity primarily through MVPDs should have that opportunity as well.

While Entravision expects competition in the set-top box market to bring a number of benefits to the video programming marketplace, it recognizes and is concerned that the Commission's proposals may introduce certain risks as well.<sup>1</sup> Commenters have expressed their fears<sup>2</sup> that programmers will have too little control over their content once it reaches third-party hands, and too little recourse against third parties that refuse to recognize programmer-MVPD contract provisions concerning channel placement, scheduling, and advertising.

Entravision acknowledges that the competitive risks may be substantial for many programmers, including minority-oriented programmers, who have a considerable investment in current MVPD arrangements and these risks cannot be ignored solely by the potential gains from more competition. Entravision urges the Commission, while moving to an open set-top box regime, to protect the intellectual property and contractual interests of programmers, while ensuring that the new set-top box providers do not adopt exclusionary tactics such as charging fees or requiring the sharing of programmer proprietary information or advertiser revenues. In particular, Entravision urges the Commission to ensure that intellectual property rights, anti-piracy policies and licensing agreements are provided with robust protections, in favor of programmers, in such an open and competitive set-top box marketplace.

In the instant proceeding, the Commission's task is to balance carefully the programming opportunities offered by open set-top box market with the need to protect programmer rights that will enable programmers to offer a variety of programming, both old and new, legacy and innovative, including those specially directed to minority groups. Entravision believes the Commission can achieve such a balance by ensuring that the new set-top box regime is platform-neutral, thereby preventing any entity or group of entities from securing "gatekeeper" status. A platform- or technology-neutral regime will ensure that the video marketplace is open to all

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<sup>1</sup> Entravision has taken particular note of the letter submitted, on May 19, 2016, by Senator Robert Menendez to Chairman Wheeler and his fellow Commissioners. In that letter, Senator Menendez urges the Commission to "support a competitive industry in which intellectual property is protected and companies are encouraged to create diverse and high quality content for consumers." Entravision wholeheartedly agrees.

<sup>2</sup> Just yesterday, an opinion piece was published in the New York Times expressing concerns that new set top box providers, such as Google, would themselves become "gatekeepers" that excluded rather than included programmers.

<http://www.nytimes.com/2016/05/30/opinion/dont-hand-our-tvs-over-to-google.html>.

Entravision finds telling the commentator's statement that: "Done right, this could unleash innovation and usher in a new era in which televisions become a direct extension of our online world." The FCC must spend the time and effort to make sure that the adoption of rules that bring about open set top boxes are done right and the concerns of opponents put to rest.

programmers, including minority programmers, while honoring and protecting the rights, access, and interests of content providers, including those very minority-oriented programmers.

Respectfully submitted,

ENTRAVISION COMMUNICATIONS CORPORATION

By: \_\_\_\_\_

Barry A. Friedman  
Thompson Hine LLP

Its Attorneys

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