



June 8, 2016

VIA ECFS

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

RE: **Notice of Ex Parte Presentation**, *In the Matter of Expanding Consumers' Navigation Choices, MB Docket No. 16-42; Commercial Availability of Navigation Devices, CS Docket No. 97-80*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Writers Guild of America, West, Inc. ("WGAW" or "Guild") submits this letter summarizing the following meetings that WGAW Political Director Corrina Freedman, WGAW Senior Research & Policy Analyst Marvin Vargas, WGAW DC Representative Michael Forscey of Forscey PLLC, Monica Desai of Squire Patton Boggs (US) LLP, Ben Tarbell of Squire Patton Boggs (US) LLP, WGAW members Cheo Hodari Coker and Dahvi Waller had on Monday June 6, 2016 and Tuesday June 7, 2016:

- A meeting with Daudeline Meme, Legal Advisor to Commissioner Clyburn;
- A meeting with Commissioner Rosenworcel and Marc Paul, Legal Advisor;
- A meeting with Gigi Sohn, Counselor to Chairman Wheeler; Eric Feigenbaum, Office of Media Relations; Jessica Almond, Office of the Chairman; Louisa Terrell, Office of the Chairman, Chavez Adams, Office of the Chairman; Amber Lucci, Office of the Chairman; Ariel Diamond, Office of the Chairman; and
- A meeting with Chairman Wheeler, Gigi Sohn and Jessica Almond.

In the meetings, WGAW representatives expressed the organization's support for the Commission's proposal to develop a competitive navigation device market. WGAW

representatives expressed the belief that a competitive set-top box market will promote greater competition in video programming, and support wider access to and more distribution of diverse and independent programming. This proposal will lead to greater innovation in the user interface as device makers compete for market share.

Guild representatives explained that a competitive set-top box market can help level the playing field between traditional television and online video, thereby giving consumers more choice and creating more buyers for the content writers create. Guild representatives noted that as the television market has consolidated, the number of buyers for writers' work has decreased and given a few companies increased control over the content that reaches consumers.

In particular, Guild representatives emphasized that the traditional television model rewards content that appeals to the largest number viewers, while online video platforms thrive if they attract niche audiences. This is why it is not surprising the majority of stories currently told on television only represent a small cross-section of the American public. Over the last two decades, most available work for writers has been controlled by six companies, but the landscape is changing because of the development of the online video market. There are now more than 400 scripted shows on television. The increased competition is allowing for more unique stories to be told, and has the potential to counter the effects of media consolidation. An integrated set-top box that presents these new online programs alongside traditional television will give consumers greater power to find what they want to watch and choose what they consume. Guild representatives likened the experience an integrated set-top box would provide consumers to the choices presented at a newsstand. Viewers should be able to go to one place to choose their viewing content, just like they can go to a newsstand to pick any number of options for reading content.

Guild representatives stressed that minorities and women are underrepresented on television, as showrunners in writers' rooms, and behind the camera, and that there are only a handful of minority owned cable channels. Cable television allows networks and multichannel video programming distributors ("MVPDs") to act as gatekeepers and limit diverse and independent content. Only the small number of minority programmers who have made it onto cable are defending the industry's monopoly over set-top boxes and corresponding control over the television screen. Rather than protect the status quo, the Guild supports creating a competitive set-top box market to provide more opportunities to programmers – and in particular, diverse and independent programmers - outside of cable's walled garden.

Guild representatives also stated that it is important this proposal limit the ways that MVPDs could undermine the rules and prevent a competitive market from truly developing. The standards body that certifies devices must not be controlled by MVPDs and MVPDs must be prohibited from charging consumers for the right to use their own device. The Guild also thinks the rules should allow for future innovation.

Representatives of the Guild then discussed why they believe this proposal will protect content and not lead to widespread copyright infringement and piracy. The Guild believes that the Commission's proposed rules can strike a balance between promoting competition and protecting content. For instance, the Commission has proposed flexibility in the content protection systems that MVPDs may use, subject to reasonable limitations on an MVPD's ability to use security to undermine a competitive set-top box market. In addition, Guild representatives noted that the risk of increased piracy resulting from the proposed rules do not appear to be any greater than those presented by an open Internet, where there's a growing legal market that is attractive to consumers. Although the Internet has made it easier to access pirated material it has also facilitated the dramatic growth of new, legal markets for both original video programming and the reuse of television and film content. Guild representatives do not believe that a competitive set-top box market that incorporates television and online programming on one device will lead consumers to choose pirated content over legal options. Legal streaming services now dominate Internet traffic and tens of millions of consumers are paying for access to subscription video services, demonstrating that when consumers have access to legal markets for content, they will chose legal content over pirated content.

WGAW also addressed the argument that the FCC should tread carefully because MVPDs contract with networks to create specific channel lineups. WGAW agrees that a consumer's use of a competitive navigation would potentially alter the channel lineup that an MVPD has contracted to maintain. WGAW believes that the FCC should facilitate the ability of consumers to create the channel lineup they want. Consumers have paid an MVPD for a package of programming - not a specific channel lineup. Further, the large media companies that dominate television have used their power to secure channel positioning that limits competition and new entrants. Allowing consumers to choose will facilitate easier access to diverse and independent programming, which is normally not prioritized by MVPDs in their lineups. Consumers can already create a favorites channel lineup that only shows certain channels, allowing consumers to partially ignore these channel lineups. WGAW believes that limiting third parties from flexibility in the channel lineup would be overly restrictive, and not in the best interests of consumers.

If a consumer wishes to view TV network information through an MVPD-imposed lineup because they find it easier to do so, then they can certainly continue to rent the MVPD box. And, if they prefer a more customized interface, that allows them to more easily find the channels they want, the Commission should not be slowing down the process to figure out how to prevent consumers from having that choice in a channel lineup.

As the Commission has recognized, implementing Section 629 of the Act means “empower[ing] consumers to choose how they wish to access the multichannel video

programming to which they subscribe, and promot[ing] innovation in the display, selection, and use of this programming.”¹

WGAW representatives then discussed the recommendations they put forward for the Commission to prevent competitive navigation devices from interfering with embedded advertising content, which they are confident can be addressed through the rulemaking process. The four options the WGAW suggested to the Commission were:

- a) Find, as the Commission has proposed to do, that the “Service Discovery Data” stream “need not include descriptive information about the advertising embedded within the program, to ensure that competitive Navigation Devices do not use that data to replace or alter advertising.”
- b) Require that the “Compliant Security System” license for competitive navigation devices must specify that such devices may not alter, replace, overlay, or remove protected content, which would include embedded advertising content.
- c) Require that use of the Multichannel Video Programming Distributor (MVPD) “Information Flows” by competitive navigation devices is subject to terms and conditions of advertising agreements between MVPDs and content providers, and this information regarding the terms of advertising content be passed through as data in the information stream.
- d) Require that in order for competitive navigation devices to be “certified” in accordance with the proposed rules, that the competitive navigation device must not alter, replace, overlay, or remove embedded advertising content.

These recommendations were addressed in detail in a separate ex parte the Guild filed on May 31, 2016, which the Guild circulated at these meetings.²

Sincerely,

/s/

Corrina Freedman
Political Director
Writers Guild of America, West, Inc.

¹ Expanding Consumers’ Video Navigation Choices, Commercial Availability of Navigation Devices, MB Docket No. 16-42, CS Docket No. 97-80, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 16-18, ¶ 1 (Feb. 18, 2016).

² See Letter from Monica Desai, Counsel to Writers Guild of America, West, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 16-42, CS Docket No. 97-80 Writers Guild of America, West, Inc., at 1-7 (May 31, 2016).

cc: Chairman Tom Wheeler
Commissioner Jessica Rosenworcel
Daudeline Meme
Marc Paul
Gigi Sohn
Jessica Almond
Eric Feigenbaum
Louisa Terrell
Chavez Adams
Amber Lucci
Ariel Diamond