



June 8, 2016

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

Re: MB Docket No. 16-42, CS Docket No. 97-80

Dear Ms. Dortch:

On Monday, June 6, 2016, Fred Campbell, director of Tech Knowledge, met with Marc Paul, Legal Advisor to Commissioner Jessica Rosenworcel at the Federal Communications Commission. Mr. Campbell discussed the comments and reply comments filed by Tech Knowledge in these proceedings as follows:

- The Wholesale Proposal would require MVPDs to offer their video services for resale by third-parties on a common carriage basis in violation of sections 542(c) and 153(11) of the Communications Act, which expressly prohibit the FCC from regulating MVPDs as common carriers.
- The Wholesale Proposal would violate MVPDs' First Amendment rights by restricting their editorial discretion in a manner that cannot be justified under intermediate or strict scrutiny.
- The video interface between consumers and MVPD programming is itself core speech that is entitled to strict First Amendment scrutiny; and even if the video interface were not considered core speech in and of itself, an MVPD's interface would still be entitled to First Amendment protection due to its close nexus to an MVPD's exercise of editorial discretion with respect to its underlying video programming.
- The FCC's competitive justification for abridging MVPDs' First Amendment rights is insufficient to demonstrate harm justifying the elimination of editorial discretion by a particular class of the press because the FCC has already found the market for MVPD services (which necessarily encompasses navigation devices) effectively competitive. The First Amendment requires the FCC to "explain[] why, in the pursuit of diversity, the independence of competing vertically integrated MVPDs is inferior to the independence of unaffiliated [navigation device companies]." *Time Warner Entm't Co., L.P. v. F.C.C.*, 240 F.3d 1126, 1139 (D.C. Cir. 2001).
- The Wholesale Proposal also burdens far more speech than necessary to remedy whatever competitive issues might exist with respect to navigation devices, because there are readily-available alternatives that would eliminate any need for a separate navigation device

(or separate navigation software) without abrogating MVPDs' editorial discretion (e.g., the app-based proposal).

- Shifting control over the video interface from MVPDs to Internet software companies would threaten the free flow of information and ideas by concentrating control over the video interface in the hands of a few, giant Internet software companies. Internet software companies would have the same incentives as MVPDs to influence consumer behavior in the video marketplace but would have far greater ability to do so than MVPDs, because the largest Internet software companies (1) have greater scale and ability to reach consumers than MVPDs, but (2) would not be subject to the FCC's regulatory constraints on MVPD market structure or public interest obligations (e.g., political advertising disclosures).

Sincerely,

/s/ Fred Campbell /s/

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cc:

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