



June 9, 2016

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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

Dear Ms. Dortch:

On June 8<sup>th</sup>, 2016, I met with Maria Mullarkey MB/Policy, Brendan Murray MB/Policy, Matthew Collins OGC, Susan Singer MB, Mary Beth Murphy MB, Kathy Berthot MB/Policy, Nancy Murphy MB, Lyle Elder MB/Policy, Arian Attar MB/Policy, Kelsie Rutherford MB/Policy, and Antonio Sweet OSP

Background: As someone who has been working with computers since the 1970's, I've welcomed the changes that new technology has brought. I was involved in the distribution of the first pre-recorded videocassettes, licensing movies to pay TV back when HBO had only 6 million subscribers, the first person to license a theatrical film to a basic cable TV service as a television premiere, a participant in TCI experiments in VOD distribution and an early proponent of day-and-date theatrical/TVOD distribution. (TVOD or Transactional Video-on-Demand allows consumers to watch a film for a limited period for a fee. As a frame of reference, it's akin to a video rental.)

The independent film business grew up in the 1980's around the development of the video business. In the mid-2000s, as that business began to fade, the number of US independent distributors began to shrink. I started my company in 1995 and we were struggling to build new models to "replace" the vein of income we had depended on from home video.

In 2006, IFC made a deal with Comcast to distribution movies on TVOD, a new door opened. This was the first time an MVPD gave special placement to an independent film on the user interface. This willingness on behalf of a partner to merchandise movies

directly to the consumer has been instrumental in allowing companies like mine to not only reach all US TV households, but to make them aware of the films we're bringing to them.

While we handle films in all media in the United States and Canada, my company is a specialist in the cable VOD distribution arena. We handle some 40 movies each year, including many foreign language movies and documentaries as well as more commercial fare. While I haven't done an accurate tally, it's my understanding that there are some 70 independent distributors in the United States who handle over 1,000 movies per year – and most of these movies are produced in the United States.

The issue: The MVPDs and companies like ours merchandise and market our films for TVOD in a variety of methods. The first and most important of these is the placement. Most transactions are impulse buys made at the point-of-purchase. After placement comes promotion on the user interface and finally, we may buy ads on other channels, in FOD offerings, etc. With companies like Comcast, the ad spend is split between Comcast and us on a pro rata basis depending on our revenue split for the title.

If the User Interface (UI) is controlled by a third party, another barrier will be placed between us and the consumer. As it is, we're paying high rates of participation to the cable, telephone, satellite and Internet companies – there isn't room in our income to share with yet one more partner.

The key is not availability or search. The key is visibility. To effectively reach a wide audience, one normally has to spend \$30 million and up. This method of distribution reaches as wide an audience but doesn't require that kind of spend. That's why this has become such an important revenue source for the "indies."

There was some discussion of these matters and I replied to questions to clearly differentiate between TVOD and SVOD (subscription video-on-demand services like Netflix and Amazon Prime) as well as other platforms.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being filed via ECFS. Please contact me if you have any questions regarding this matter.

Respectfully submitted,

Meyer Shwarzstein  
President  
Brainstorm Media