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June 13, 2016

*via electronic filing*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: Notice of *Ex Parte* Meeting  
Expanding Consumers' Video Navigation Choices  
MB Docket No. 16-42  
CS Docket No. 97-80

Dear Ms. Dortch:

On Thursday, June 9, 2016, Drew Simshaw of the Institute for Public Representation (IPR), Georgetown Law (Counsel to TDI), Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Zainab Alkebsi of the National Association of the Deaf (NAD), and Lise Hamlin of the Hearing Loss Association of America (HLAA) (collectively, "Consumer Groups"), met with David Grossman of Commissioner Clyburn's office, Marc Paul and Jennifer Thompson of Commissioner Rosenworcel's office, Robin Colwell of Commissioner O'Rielly's office, Matthew Berry of Commissioner Pai's office, Gigi Sohn, Jessica Almond, Louisa Terrell, Ariel Diamond, Amber Lucci, and Chavez Adams of the Chairman's Office, Brendan Murray, Susan Singer, Anne Russell, Andrew Manley, Kelsie Rutherford, Arian Attar, Mary Beth Murphy, Maria Mullarkey, Martha Heller, Nancy Murphy, Lyle Elder, Steve Broeckert, and Kathy Berthot of the Media Bureau, Karen Peltz Straus of the Consumer and Governmental Affairs Bureau, Jenny Ledig, Robert McConnell, and Suzy Rosen Singleton of the Disability Rights Office, and John Williams of the Office of General Counsel, regarding the above-referenced dockets.

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Consumer Groups expressed their appreciation for the Commission’s efforts to expand consumers’ video navigation choices,<sup>1</sup> which have the potential to spur competition and innovation that would improve the accessibility of multichannel video programming for deaf and hard of hearing consumers. Consumer Group representatives shared their frustrating experiences with current set-top boxes, including one representative’s experience of having to choose between keeping a box that is too old to customize caption settings, or having to pay to upgrade to a box that also includes unneeded features—effectively amounting to a surcharge for accessibility. Consumer Groups stressed that, as long as all competitive navigation devices are explicitly subject to the Commission’s baseline accessibility rules, deaf and hard of hearing consumers would benefit from competitive navigation devices competing on accessibility features.

In order to realize these potential benefits, Consumer Groups urged the Commission to make clear that all competitive navigation devices—however they are defined—would be subject to the Commission’s accessibility rules. Those competitive navigation devices composed of hardware and integrated software would also constitute covered “apparatus” subject to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”),<sup>2</sup> regardless of whether such a device certifies its compliance. The Commission should make this explicitly clear. For software-only applications that are not currently covered apparatus as defined in the IP Closed Captioning Report and Order,<sup>3</sup> the Commission must ensure, and make clear, that these competitive navigation devices would also be subject to the CVAA. There are a number of ways the Commission could reasonably do this, including by updating its definition of “apparatus”<sup>4</sup> to include software-only applications, or by exercising reasonable ancillary jurisdiction to fulfill the objectives of the CVAA.<sup>5</sup>

Consumer Groups also stressed the importance of keeping MVPDs in the loop when it comes to ensuring quality customer service and complaint resolution.<sup>6</sup> Although the emergence of new devices will necessarily mean that deaf and hard of hearing consumers will need to establish new relationships with new entities, Consumer Groups are hopeful that, so long as all entities are subject to the baseline accessibility requirements, companies will compete on quality accessibility and customer service.

Finally, Consumer Groups stressed the importance of requiring that competitive navigation devices certify their compliance with the Commission’s accessibility rules,<sup>7</sup> and that

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<sup>1</sup> See *Expanding Consumers’ Video Navigation Choices, Notice of Proposed Rulemaking and Memorandum Opinion and Order* (“NPRM”), MB Docket No. 16-42 (Feb. 18, 2016).

<sup>2</sup> Pub. L. No. 111-260, 124 Stat. 2751 (2010) (“CVAA”).

<sup>3</sup> *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communication and Video Accessibility Act of 2010, Report and Order*, (“IP Closed Captioning Report and Order”) MB Docket No. 11-154, ¶ 93-94 (Jan 12, 2012).

<sup>4</sup> See Comments of Consumer Groups and DHH-RERC (Apr. 22, 2016) at 4 n. 12.

<sup>5</sup> See *id.* at 4-6; Reply Comments of Consumer Groups and DHH-RERC (May 23, 2016) at 2-5.

<sup>6</sup> See Reply Comments of Consumer Groups and DHH-RERC (May 23, 2016) at 5-6.

<sup>7</sup> See Comments of Consumer Groups and DHH-RERC (Apr. 22, 2016) at 6-7; Reply Comments

accessibility be included in the “Content Delivery Data” and “Service Discovery Data” information flows so that deaf and hard of hearing consumers do not experience a drop-off in their ability to access, search, and select multichannel video programming on competitive navigation devices, should they choose to use one.<sup>8</sup>

Above all else, Consumer Groups stressed that fair competition and innovation will benefit those that rely on accessibility features when accessing multichannel video programming, and that it should not be controversial to subject all incumbent and competitive navigation devices, performing the same function, to the same accessibility rules.

Respectfully submitted,

/s/

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of Consumer Groups and DHH-RERC (May 23, 2016) at 6.

<sup>8</sup> See Comments of Consumer Groups and DHH-RERC (Apr. 22, 2016) at 7-8; Reply Comments of Consumer Groups and DHH-RERC (May 23, 2016) at 6-7.