

June 16, 2016

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

**Re: Notice of Ex Parte Presentation, MB Docket 16-42, CS Docket 97-80**

Dear Ms. Dortch:

On June 15, 2016, Victor Cerda of Vme TV, Keith Clinkscales of Revolt TV, Alfred Liggins of TV One, Michael Powell and James Assey of NCTA, Bob Quinn of AT&T/DIRECTV, Kathy Zachem of Comcast and Paul Glist of Davis Wright Tremaine held separate meetings regarding the above-referenced proceeding with:

Jessica Almond, Legal Advisor to Chairman Wheeler; Eric Feigenbaum; Jonathan Sallet and John Williams of the Office of General Counsel; and Scott Jordan, Chief Technologist (via phone);

Commissioner Jessica Rosenworcel, Marc Paul, Legal Advisor, and Jennifer Thompson, Special Advisor;

Commissioner Mignon Clyburn, David Grossman, Chief of Staff, and David Nayer, intern; and

Commissioner Mike O’Rielly and Erin McGrath, Legal Advisor.

Representatives from Revolt, Vme, and TV One began the meetings by thanking the Chairman for his efforts to promote increased competition for navigation devices. While they noted their ongoing concerns with the current proposal’s potential impact on minority programming, they acknowledged the underlying goal of the proceeding of promoting greater competition in navigation devices while fully protecting the rights of content owners and consumers. They expressed appreciation for the Commission’s stated openness to consider alternative approaches that might advance these objectives. Toward that end, they also explained that they had engaged in discussions with MVPDs and others over the past several weeks to try to identify an alternative approach that would achieve the goals of all interested parties in promoting a competitive, vibrant, and secure video marketplace for consumers.

The MVPD representatives then explained that an alternative approach could be built on enforcing an industry-wide commitment to develop and deploy video “apps” that all large MVPDs would build to open HTML5 web standards (see attached). The MVPDs further explained that this approach would allow consumers to get their MVPD services on third-party devices by simply using the HTML5-based app, and that it has already attracted widespread support from MVPDs and an international development community. They expressed their belief that such an approach could further advance competition for independent device manufacturers within the context of a market transformation already underway and in a manner that fully protects and respects the rights of content owners.

MVPDs explained that this approach would provide significant benefits to consumers.

- Consumers would benefit from more choice. Under the new approach, consumers who want to watch their Pay TV service on different devices in the home could download a new Pay TV app to the smart TV, tablet or other “connected” device and start viewing without a cable set-top box. Because of satellite’s one-way architecture, satellite subscribers would need one gateway device from their satellite company to bring the signal to the home and provide features competitive with two-way services, but satellite providers would also offer downloadable HTML5 apps for third-party connected devices. Consumers would use the third-party manufacturer’s distinctive user interface for controlling the retail device and its features, and have the capability to search MVPD content (and the content available from other content providers such as Netflix, Hulu, HBO Now, etc.) through the third-party manufacturer’s user interface.
- Content creators would also benefit from this approach because it would assure that third-party device manufacturers would respect customer privacy and other consumer protections, advertising rights and protections, branding and copyrights. It would also assure that the technical integrity of the app would be maintained so that consumer protections, content security, and the terms of the MVPD’s underlying programming licenses and the scope of rights granted by the programmers to the MVPD are fully enforced.
- The approach would protect the copyrights, contracts, advertising, presentation and promotional terms that are essential for the creation and distribution of programming, thereby ensuring that consumers can continue to benefit from a video programming ecosystem that produces unprecedented levels of high-quality programming.
- Consumers would receive the privacy, children’s programming, accessibility and other consumer protections that come with their MVPD subscriptions.
- Consumers would continue to receive the benefits of continuous innovation and variety in retail devices *and* in MVPD networks and service because this apps-based approach would allow rapid updates by third-party device manufacturers and by MVPDs without the need for either to seek permission from the other.

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The attendees closed by reiterating their belief that this alternative approach of creating enforceable commitments is the most constructive, lawful, and achievable path for moving forward and meeting the goals of Section 629 while fully protecting the commercial and consumer rights we enjoy today.

Respectfully submitted,

/s/ Paul Glist

Paul Glist

cc. Hon. Mignon Clyburn  
Hon. Jessica Rosenworcel  
Hon. Michael O'Rielly  
Jessica Almond  
Eric Feigenbaum  
Jonathan Sallet  
John Williams  
Scott Jordan  
Marc Paul  
Jennifer Thompson  
David Grossman  
Erin McGrath

## PROMOTING CONSUMER CHOICE, PROTECTING CONTENT AND PRESERVING CONSUMER PRIVACY THROUGH APPS

We believe that there is an alternative approach to the NPRM that would: (1) allow any manufacturer to offer innovative retail devices that can access and search MVPD service along with online content; (2) enable consumers to receive their MVPD service via an open standards-based downloadable app rather than a leased set-top box; (3) fully respect content creators' licensing terms that support high-quality diverse programming; (4) keep content secure; and (5) preserve full privacy and other consumer protections.

- *Open Standards-Based HTML5 App.* Each MVPD with 1 million or more subscribers would develop an app for delivering its MVPD service based on W3C's HTML5 Open Web Platform standards (or more advanced successor standards). The app would include the full suite of the linear and on-demand programming the MVPD has the rights to include and the MVPD's user interface when using that service. Use of the open standard would give consumers a broad choice of smart TVs and other "connected" retail devices on which they could receive their subscription multichannel service while meeting program licensing, copyright, privacy, consumer protection, security, and regulatory obligations through use of the app. The MVPD would license its app *without charge* to manufacturers of third-party navigation devices for their app stores, provided that the device manufacturers and stores do not impose any fee or surcharge on MVPDs or consumers for providing or using the app or for transactions enabled through the MVPD service. The MVPD's license would be available on standard, commercially reasonable terms that require the manufacturer to respect customer privacy and other consumer protections, advertising rights and protections, branding and copyrights. It would also require device manufacturers to maintain the technical integrity of the app so that consumer protections, content security, and the terms of the MVPD's underlying programming licenses and the scope of rights granted by the programmers to the MVPD are fully enforced.
- *User Interface Competition.* To enhance competition among device user interfaces, consumers would use the manufacturer's distinctive user interface to choose among multichannel services, online video services, and other device features (as Roku or Apple TV do today). If a consumer selects multichannel content, the consumer would watch the content within the MVPD's app (as they do with Netflix, Amazon, and Hulu today).
- *Integrated Search.* The MVPD's app would enable the retail device to also use its own user interface to obtain combined search results from MVPD content and from online video providers offering licensed content on the same device. Once selected, the multichannel content would be played through the MVPD's app.
- *Timetable.* These commitments would be met within 2 years, would extend for 5 years, and may be renewed by the Commission if warranted.
- *Other Commercial Agreements Welcome.* MVPDs and manufacturers of retail navigation devices may continue to enter into other bilateral commercial agreements, such as the agreements that support major retail platforms today.