

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding Consumers' Video Navigation Choices)	MB Docket No. 16-42
)	
Commercial Availability of Navigation Devices)	CS Docket No. 97-80

COMMENTS OF AMAZON

Summary and Introduction

Amazon commends the Commission for proposing a new approach to deliver for consumers the competition for navigation devices that Congress envisioned when it adopted Section 629 of the Communications Act. Consumers currently enjoy a wealth of choice in almost every facet of the software and devices that comprise today's video and communications sphere except one: devices to access MVPD-delivered content. Given the scarcity of choices consumers have to access and locate MVPD content, and the untapped potential for significant competition in this space, the time is ripe for Commission action. The NPRM strikes the appropriate balance, providing third parties access to service discovery, entitlement, and content delivery while empowering MVPDs to innovate themselves. This approach will promote competition and innovation by all parties—third-party entities and MVPDs alike. Amazon looks forward to participating in a thorough and meticulous technical standards development process to develop protocols that will enable third-party providers to give consumers actual choice in selecting devices to navigate and access MVPD programming and other services.

Amazon.com launched on the World Wide Web in July 1995. From the beginning, the company has been guided by four principles: customer obsession rather than competitor focus, passion for invention, commitment to operational excellence, and long-term thinking. Customer reviews, 1-Click shopping, personalized recommendations, Prime, Fulfillment by Amazon, Amazon Web Services, Kindle, Kindle Direct Publishing, Fire tablets, Fire TV, Amazon Echo, and Alexa are some of the products and services pioneered by Amazon. Having invented paradigm-shifting new technology, Amazon believes its perspective offers a unique value as the Commission considers the future of video programming.

I. New Rules Will Enhance Competition and Consumer Choice

The Commission has a longstanding history of pursuing policy changes that promote the twin benefits of increased competition and enhanced consumer choice. This proceeding offers the Commission an opportunity once again to advance simultaneously both goals. In adopting Section 629, Congress made clear its vision of ensuring consumers can choose to navigate and view their MVPD content on the device of their choice and that device makers compete to offer the best combination of features that meet consumers' video watching needs. The promise Congress made in including this provision in the Telecommunications Act of 1996 has never been realized, but the Commission's proposal provides a balanced approach to achieving this goal.

Competition is sorely lacking in the market for navigation devices. As the NPRM notes, consumers have few alternatives to leasing set-top boxes from their MVPDs, and the vast majority of MVPD subscribers lease boxes from their MVPDs.¹ As a result, consumers are

¹ See Notice of Proposed Rulemaking and Memorandum Opinion and Order, *In the Matter of Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices*, MB Docket No. 16-42; CS Docket No. 97-80, ¶ 13 (hereinafter "NPRM").

unable to select for navigation a software or hardware solution that best meets their tastes and needs. Injecting competition into the navigation device market, and the increased consumer choice that will result from greater competition, will generate numerous benefits for consumers and programmers alike.

The NPRM also observes that the cable industry has highlighted the widespread use of MVPD Android and iOS applications,² which the cable industry has asserted are an effective means for furnishing MVPD service to retail devices³. Even if MVPD applications are in widespread use on mobile devices and tablets, that does not demonstrate that the market for navigation devices is competitive. As a threshold matter, in order for a consumer to be able to use an MVPD application, that consumer must first have a set-top box; MVPD applications are thus adjuncts to—and not substitutes for—set-top boxes. Furthermore, the prevalence of applications does little to affect the consumer’s navigation options and viewing experience on an actual television, since there are so few applications accessing MVPD content that can be found on any “smart TV.” Therefore, far from showing that competition exists in the navigation device market, the statistics regarding the use of MVPDs applications in fact show, as the NPRM states, “. . . that almost all consumers have one source for access to the multichannel video programming to which they subscribe: the leased set-top box, or the MVPD-provided application.”⁴

² See *id.*, citing Comments of the National Cable & Telecommunications Association, MB Docket 15-64, at 14-15 (“NCTA Comments”).

³ See NCTA Comments at 14 (“Apps are an effective, widely-adopted, expanding means for providing MVPD service to retail devices.”)

⁴ NPRM at ¶ 13.

Increasing genuine competition will spur new competitive navigation solutions that can enable consumers easily to price-compare for content, devices, and applications, discover new content, and engage with their content providers and fellow consumers (with features that, for instance, identify popular programming) through an easily integrated interface. Consumers will be able to choose among more viewing experiences and prices for the navigation device that offers their preferred combination of functionality and value.

Meanwhile, new paths for accessing video will emerge that increase the opportunity for content creators and for video programmers—particularly independent and minority programmers—to reach their audiences. For instance, new navigation devices could offer consumers competitive services such as integrated access to content available both through MVPD services as well as through Over The Top (“OTT”) services and thereby facilitate consumers’ access to OTT services. Because of the infinite capacity available for diverse content through OTT distribution, as compared to the finite capacity available for traditional MVPD distribution, these new navigation devices can increase opportunities for independent and minority programming to find larger audiences—and offer new choices to those audiences. Creating competition in the navigation devices market can thus spark the creation of a virtuous cycle of benefits for both consumers and programmers. In short, it can incentivize continuous innovation and lead to an overall better consumer experience.

However, Commission action is needed to enable consumer choice among navigation devices for televisions. Without it, consumers likely will never see the same level of competition in the navigation devices market segment that they currently enjoy in the OTT context. The Commission therefore must take concrete action to allow these new navigation technologies to fully flourish. While video streaming services are growing, to the benefit of consumers and

creators alike, MVPD customers have seen little innovation in how they can access traditional pay TV services. By adopting the thoughtfully calibrated proposal set forth in the NPRM, the Commission can trigger competition among navigation devices, and the new devices brought to market will enable consumers to fully integrate and navigate MVPD-delivered content with OTT-provided video options. The time is past due for users to enjoy choice in the navigation device market.

II. The Intellectual Property of Programming Content and Business Agreements Can and Must be Protected

Over the many years that the Commission has wrestled with promoting competition for navigation devices, the issue of copyright protection has been a focus of much debate. Amazon believes that the Commission's proposal rightly uses modern, digital technology to get around those old analog debates. We acknowledge, however, that the integrity of copyrighted programming is an important concern.

Fortunately, robust media protection technology is already available and in use by MVPDs. Content protection systems like HDCP, DTCP, and PlayReady are currently used by MVPDs ranging from Comcast to AT&T/DirecTV to DISH and by OTT services like Amazon Video. These systems provide cryptographically strong protections for content that prevent external misuse and even provide for key management that protects against the manufacture of rogue devices. It is because of the creation and standardization of this family of technologies, already adopted and effectively deployed by MVPDs, that Amazon is confident in the industry's ability to deliver content in ways that protect media rights on a wide range of navigation devices.

Similarly, consumer electronics devices provide industry-leading media protection technologies in accordance with these standards. Amazon Fire TV 4K, nVidia Shield TV, Roku4, and numerous televisions from Sony, Vizio, and other manufacturers are already trusted

by movie studios to deliver high-quality ultra HD movies with theater quality sound. These devices use hardware protections that assure that content delivered to these devices can only be decrypted and played back by devices authorized to play back that content. Furthermore, the technological solutions that exist today are much more advanced and robust than they were even when CableCARD was created. As the proliferation and success of OTT services (including those offered by Amazon) demonstrate, modern content protection technologies are both in use today and highly effective.

In that context, the Commission can proceed in writing its rules with the knowledge that third-party providers have the ability and the proven track record to protect programming content. Amazon thus agrees with the NPRM that once consumers have used their preferred navigation device to choose what programming to watch, the navigation device provider must not compromise the programming stream and its delivery to consumers. Amazon recognizes the tremendous investment programmers make in developing video programming and will honor that investment and a consumer's choice to view particular content as it was created.

At the same time, Amazon aims to enhance the viewing experience by giving consumers competing tools to identify, locate, and view programming of their choice with new navigation devices, applications, and guides and also to optimize the consumer's viewing experience. Amazon will not alter the programming stream, but seeks the ability to innovate around the stream. New navigation technology could, for instance, offer to a consumer—prior to when that consumer makes a viewing selection—suggestions about new programs he or she might enjoy based on viewing history. This competitive technology can put consumers in a better position to discover independent and minority programming as well as specialized content aligned with a particular individual's interests. Furthermore, particularly to the extent that content is siloed,

which is generally the case with even “smart TVs” connected to MVPD services, new navigation devices could unify and simplify the user experience, further facilitating the user’s ability to locate a rich variety of content.

Consumers today are able to automatically access the desktop or the mobile version of a website, and they expect the websites they access to be optimized for the device they are using. Video consumers will expect the same thing: navigation devices thus will optimize the viewing experience for consumers by tailoring the content to the device on which it is being viewed or the way in which it is accessed. For instance, content that is originally transmitted for a 4K device would need to be optimized if a consumer were viewing it on a device that could support only 2K. Competing navigation devices could offer technologies that seamlessly make these technical adjustments to optimize the viewing experience for the consumer—without altering the content of the programming. Of course, regardless of the manner in which a consumer navigates or views programming, the intellectual property of programming content would remain protected.

III. Consumers Who Would Use Competitive Navigation Devices Have Strong Privacy Protections

Promoting competition in the navigation device market would not present significant consumer privacy concerns. The NPRM recognizes that cable operators and satellite companies are subject to a privacy regime under the Communications Act.⁵ Today, however, potential competitive providers of navigation devices such as Amazon have robust privacy policies, and those policies are subject to adherence and enforcement under the Federal Trade Commission (“FTC”) Act. Both regimes provide consumers with equally effective privacy protection.

⁵ See *id.* at ¶ 73.

Section 5 of the FTC Act prohibits companies from engaging in unfair or deceptive acts and practices. The FTC has used its Section 5 deception authority to bring enforcement actions against companies for failing to honor promises made to consumers in that company's privacy policy. The FTC thus holds companies responsible for ensuring that the representations they make regarding the collection, use, and distribution of consumers' personally identifiable information ("PII") and those companies' actual collection, use, and distribution practices are in alignment.

Amazon has a robust privacy policy⁶ that gives consumers protection over the collection, use, and distribution of consumer PII, and this policy would apply to any new services Amazon develops in connection with its competitive navigation devices. Like any other privacy policy, Amazon's privacy policy is and will remain subject to FTC enforcement actions. Thus, even though the privacy regulatory regime that applies to Amazon is different than that which applies to cable and satellite companies, the privacy regulatory framework that governs Amazon is equally robust. Consumer privacy concerns should therefore not preclude the development of a healthy navigation device market.

IV. Content Protection and Security Must Be Prioritized In a Thorough Process

Amazon is cognizant that both content protection and security must be taken into account when creating a competitive market for navigation devices. We look forward to a thorough, open, and transparent process to reach a consensus approach that addresses each of these equally important concerns.

⁶ See *Amazon.com Privacy Notice*, AMAZON.COM, http://www.amazon.com/gp/help/customer/display.html/ref=footer_privacy?ie=UTF8&nodeId=468496 (last visited April 4, 2016).

Content Protection. In working to ensure the protection of content, interested parties will not need to start at square one: as stated above, the tools necessary for meeting these objective are already available. Amazon Video, for instance, has for years demonstrated its commitment to and success in delivering premium content to consumers with utmost security: Amazon already meets studio-quality digital rights management standards and related requirements, including 4K, when it routinely handles premium content on its Amazon Video website. The same sort of high-value content to which Amazon already has access for its current service is the sort of content that will be at issue in the competitive navigation device context. Because Amazon can apply content protection measures equally as rigorous as those it is currently using to the new services it will be offering, content protection concerns need not present a stumbling block that prevents consumers from being able to select a navigation device of their choosing.

Security. Amazon firmly believes that the security framework proposed in the NPRM is achievable, and we look forward to participating in open and transparent processes conducted by objective and balanced standard-setting entities to develop protocols that enable the competition envisioned by the NPRM.

V. New Rules Should Apply To Only A Defined Category of MVPDs

Finally, it is important to reach a common understanding on the scope of the proposed rules. The new regulations should extend only to an MVPD providing facilities-based linear and on-demand video services commonly sold as Pay TV packages by MVPDs to customers. The new regulations should not extend to services such as music, DVR, and video services delivered over the Internet where there is ample competition and consumer choice today. The reason for this limitation is that these other services are already available to consumers through multiple avenues; by contrast, the overwhelming percentage of cable channels today are still available

through only an MVPD, and that is what Section 629 seeks to regulate. Accordingly, an MVPD that packages an OTT subscription service with, for example, its base package offering would not subject the OTT service to the navigation device regime since that OTT service falls outside of the MVPD's base package.

* * *

For the reasons set forth above, the Commission should proceed with its proposed balanced approach to implementing Section 629. Creating competition and consumer choice in the navigation device market will lead to a host of benefits for consumers and programmers alike, and concerns related to the intellectual property of programming content and business agreements, consumer privacy, content protection, and security can all be adequately addressed. Amazon looks forward to working with the Commission and other interested parties throughout this proceeding to modernize this vital consumer market.

Respectfully submitted,

/s/ Brian Huseman
Brian Huseman
Vice President, Public Policy
Amazon
601 New Jersey Ave., NW, 9th Fl.
Washington, D.C. 20001
(202) 442-2286

April 22, 2016