

September 28, 2016

VIA ECFS

EX PARTE NOTICE

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

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

Dear Ms. Dortch,

On September 28, 2016, Angie Kronenberg and the undersigned counsel of INCOMPAS (the "INCOMPAS Representatives") were contacted by Marc Paul, Legal Advisor to Commissioner Rosenworcel, in order to discuss the Consumer Video Choice Coalition's (the "Coalition") earlier ex parte presentation in the record concerning the Commission's jurisdiction to implement Section 629 of the Act.¹

We discussed the Coalition's assertion that the Commission retains the jurisdiction necessary to ensure that the standard license governing the process for placing MVPD-supplied apps on a competitive device or widely-deployed platform does not contain terms and conditions that would allow MVPDs and programmers to discriminate against certain categories of devices or harm the functionality of these devices in any way. In addition to pointing out the letter's conclusion that this type of role is supported by the current rules,² the INCOMPAS representatives referred to jurisdictional analysis entered separately into the record by Public Knowledge and Hauppauge Computer Works, Inc., which confirms the ability of the Commission to serve as a "backstop" in the licensing process.³ Both in its individual capacity,

¹ See Letter from Christopher L. Shipley on behalf of the Consumer Video Choice Coalition, to Marlene H. Dortch, FCC, MB Docket No. 16-42, at 1-2 (filed September 22, 2016) ("Coalition Ex Parte Letter").

² See Coalition Ex Parte Letter at 2 (referencing 47 CFR §§ 76.1201, 76.1203, 76.1205).

³ See Letter from John Bergmayer, Public Knowledge, to Marlene H. Dortch, FCC, MB Docket No. 16-42, at 1-6 Section A (filed Sep. 20, 2016); Letter from Robert S. Schwartz, Counsel to

and as a member of the Coalition, INCOMPAS has explained that strong provisions to protect and enforce the rights of competitive device manufacturers and widely deployed platforms to develop innovative solutions will be necessary if the Commission seeks to address the competitive concerns underlying Section 629. Commission oversight of the standard license development process is completely justified given the lack of competition in this particular market in the 20 years since this provision was enacted.

Should the Commission determine that other enforcement provisions may be necessary, the INCOMPAS representatives indicated that a number of commenters had put forward alternate proposals for how the Commission could protect the marketplace for competitive devices. For example, a reciprocal certification regime has been proposed which would require MVPDs and device manufacturers to mutually certify their compliance with a list of criteria which will protect content and preserve the ability of third-parties to develop innovative consumer electronics devices.⁴ Like the standard licensing proposal, this approach would also “ensure compliance with reasonable requirements, consumer expectations, and the objectives and requirements of Section 629, including the availability of MVPD apps for competitive devices.”⁵

Pursuant to Section 1.1206 of the Commission’s Rules, a copy of this letter is being filed electronically in the above-referenced docket. Please do not hesitate to contact me if you have questions about this submission.

Respectfully submitted,

/s/ Christopher L. Shipley

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cc: Marc Paul

Hauppauge Computer Works, Inc., to Marlene H. Dortch, FCC, MB Docket No. 16-42, at 4-8 (filed Sep. 22, 2016).

⁴ See Letter from John Bergmayer, Public Knowledge, to Marlene H. Dortch, FCC MB Docket No. 16-42, at 2, Attachment A (filed Sep. 22, 2016) (describing a “Checklist for Competitive Navigation Device Certification” that would require reciprocal certification by MVPDs and device manufacturers).

⁵ *Id.*