



June 22, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 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 June 20, 2016, members of the Consumer Video Choice Coalition, represented by John Bergmayer of Public Knowledge and Adam Goldberg, consultant to Public Knowledge; Jeff Kardatzke of Google Fiber; Christopher Shipley of INCOMPAS; Linda Sherry of Consumer Action; Joseph Weber of TiVo Inc. and counsel Dave Kumar of Goldberg, Godles, Wiener & Wright LLP; and Ken Plotkin of Hauppauge Computer Works, Inc. and the undersigned counsel (collectively, the "Coalition representatives"), spoke on the phone with Chief Technologist Scott Jordan, and Michelle Carey, Mary Beth Murphy, Martha Heller, and Brendan Murray of the Media Bureau. The Coalition representatives addressed several topics related to the above-captioned proceeding.

The Coalition representatives explained that while the MVPDs' recent reworked Proprietary App proposal¹ (the "MVPD Proposal") appears to offer some positive steps, it still falls short of enabling competition and innovation as proposed. On the positive side, the MVPD Proposal establishes that large MVPDs can commit to a two-year time frame for IP-based delivery of MVPD content to third-party devices. This is a constructive development that demonstrates that the Commission's proposed timeline for developing open standards in accordance with STELAR and the *NPRM*² is feasible, and that IP-based delivery of MVPD content to third-party devices is consistent with copyright concerns and protection. The MVPD Proposal recognizes that consumers want to access MVPD video content from outside of the MVPD-controlled user interface (through universal search), and that Commission rules, not

¹ Letter from Paul Glist, Davis Wright Tremaine LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-42, CS Docket No. 97-80 (June 16, 2016).

² *In the Matter of Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices*, MB Docket No. 16-42, CS Docket No. 97-80, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 16-18 (rel. Feb. 18, 2016) ("*NPRM*").

merely voluntary MVPD initiatives, are necessary to bring about consumer choice in video devices. Finally, the MVPD Proposal would apparently provide consumers with a benefit that the Coalition has long championed – the choice of viewing the programming from the MVPD service offerings that they have paid for without being forced to rent a set-top box. This assumes, of course, that the MVPD Proposal in fact allows consumers to view all the linear and VOD content they have paid for on third-party devices, as they can today with a leased set-top box.

The Coalition, however, is concerned that the MVPD Proposal would maintain core requirements, limitations, and exclusions of the Proprietary App proposal (and of prior MVPD proposals such as OCAP and Tru2Way³) that have been declared insufficient by the Commission and NTIA. The MVPD Proposal would create a closed system in which the MVPD controls all aspects of consumer access to programming. This would give consumers fewer choices than they have today under CableCARD, where the user interface is developed and enhanced by the competitive device manufacturer and not dictated by the MVPD. Under the MVPD Proposal, competitive consumer electronics manufacturers must also design products to incorporate multiple proprietary MVPD applications that they must individually license.

While noting that they lacked the full details of the MVPD Proposal, the Coalition representatives explained that the submitted materials do not make clear how the proposal would: (1) enable third-party manufacturers to introduce a single, competitive user interface on their devices, which the Commission identified as essential to achieve Section 629's goals⁴ and that would allow consumers to search, browse, play, record, explore and pause all of the content to which they have rights; and (2) permit home recording of television shows, including sports, news, and other live programming that may not be available "on demand." The Coalition representatives expressed concern that the MVPD Proposal would require the subscriber to also have a broadband connection, and lacked clarity about how viewing MVPD content would affect any broadband data caps in effect. The Coalition representatives also noted that the purportedly

³ See, e.g., *In the Matter of Video Device Competition, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 10-91, CS Docket No. 97-80, PP Docket No. 00-67, Notice of Inquiry, FCC 10-60, at 5 (rel. Apr. 21, 2010) (noting that Tru2way's licensing agreements would limit "a device's ability to integrate video from multiple sources into a consistent viewing experience by limiting the presentation and content of a tru2way device's graphical user interface.").

⁴ *NPRM* at 8, ¶ 12; see also Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information, United States Department of Commerce, to Chairman Tom Wheeler, Federal Communications Commission, MB Docket No. 16-42, Apr. 14, 2016, at 2.

“commercially reasonable terms” for licensing under the MVPD Proposal remain undefined, but would not promote innovation without permission—a “fundamental point” expressed in the *NPRM* for rules in accordance with Section 629.⁵ The Coalition encouraged the Commission to seek additional information on these issues to allow further evaluation of the MVPD Proposal.

The Coalition representatives also discussed CTA’s Web Application Video Ecosystem (“WAVE”) project. Based on the limited information available, WAVE does not appear to address issues such as service discovery and competitive user interfaces, which are critical to competition and consumer choice required by Section 629. While it is possible that WAVE technologies could play a part in compliant solutions, there is no present indication that WAVE would offer a solution to fulfill the *NPRM*’s objectives. Furthermore, no plan or timeframe for adding the necessary elements has been provided.

Finally, with respect to content protection solutions, the Coalition representatives explained that compliant solutions can rely on existing licenses, technologies, and structures that already incorporate widely accepted mechanisms for testing and certification. For other aspects of the Commission’s proposal, such as consumer privacy or maintaining default channel lineups, the CVCC has supported device manufacturers’ certifying their compliance, subject to enforcement by the FTC and/or FCC. The Coalition representatives explained that if such testing becomes necessary, it should be conducted by a testing body or bodies independent of MVPD influence.

This letter is being provided to your office in accordance with Section 1.1206 of the Commission’s rules.

Respectfully submitted,

Consumer Video Choice Coalition

/s/ Robert S. Schwartz
Constantine Cannon LLP
Counsel to Hauppauge Computer Works, Inc.

⁵ *NPRM* at 8, ¶ 12.

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Cc:

Scott Jordan
Michelle Carey
Mary Beth Murphy
Martha Heller
Brendan Murray