

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking to Amend)	RM Docket No. 11728
the Commission's Rules Governing)	
Practices of Video Programming Vendors)	

COMMENTS OF PHILO, INC.

Alan G. Fishel
Adam D. Bowser
Arent Fox LLP
1717 K Street NW
Washington, DC 20036-5342

Robert St. John Roper
The Unlaw Firm
PO Box 6374
Denver, CO 80206
Counsel for Philo, Inc.

Date: September 29, 2014

Philo, Inc. (“Philo”) respectfully submits these comments in response to the Federal Communications Commission’s (“Commission”) Media Bureau’s *Public Notice*¹ seeking comment on Mediacom Communications Corp.’s (“Mediacom”) Petition for Expedited Rulemaking.²

I. Philo’s Innovative IPTV Solution For Multi-Unit Properties

Philo was launched from a Harvard University dorm room in 2011, and has since been named one of the 50 most innovative companies in the world.³ Philo offers an Internet Protocol-based television technology to multi-unit properties, such as college and university dormitories, through which authenticated users may access licensed video content on the premises of each property via the property’s own local high-speed data network. Such authenticated users may watch the licensed content of their choice at the time of their choice on various devices, including TVs, but also on personal computers, tablets, mobile phones, and other streaming navigation devices. In short, Philo users can bring their own device (“BYOD”) and are not constrained by the legacy technology and equipment of the property served by Philo.

All the content Philo delivers is licensed and encrypted. Philo provides flexible authentication and authorization options that allow a college campus or other property to grant access to specific sets of content to different sets of users. For example, a campus can elect to provide paid multichannel TV to the undergraduate resident population while limiting the remainder of the campus to university-originated channels. Philo integrates with common

¹ *Public Notice*, Deadline Extended for Comment on Mediacom Petition for Rulemaking to Amend the Commission’s Rules Governing Practices of Video Programming Vendors, RM 11728 (rel. Aug. 11, 2014).

² Mediacom Communications Corp. Petition for Expedited Rulemaking to Amend the Commission’s Rules Governing Practices of Video Programming Vendors (filed July 21, 2014) (“Petition”).

³ See <http://www.fastcompany.com/section/most-innovative-companies-2014>.

authentication systems on multi-unit properties today, including Shibboleth, CAS, and Internet2 InCommon, to authorize the eligible user population. This authentication process permits authorized viewers of television programming to watch the programming of their choice on their devices only while on the premises of the property and connected to the property's local data network.

Philo's technology works by leveraging a property's existing data network. As everyone is well aware, the demands of online video services like Netflix, Hulu, and YouTube can strain a multi-unit property's external bandwidth. Unlike those services, Philo's technology functions inside the property's LAN by connecting to an on-site video feed. Philo then encodes the video feed into multiple bitrates and transfers the encoded video to a set of high-efficiency caching servers, which cache the video and make it available to a user on the local network. The service delivers high quality, content-rich video straight to authenticated users on the device of their choosing, without consuming the property's external bandwidth.

Philo also can provide an end-to-end solution, including live content and recorded programs on a property's existing data network. If a property has an existing relationship with a satellite provider or multiple-system operator, Philo can enhance that existing TV offering by adding Philo's technology on top of that service to reach more authorized viewers, giving the authorized viewers access to content without requiring a set-top box or coaxial TV. Moreover, with 24/7 live programming, the ability to record favorite shows, and extensive channel lineups, a majority of students on college campuses that are served by Philo report that Philo makes their on-campus experience better. Students also report that they resort less to illegal downloads to get the content they want when they have Philo on campus. Philo therefore provides a smarter – and more secure – television experience that benefits programmers and authorized viewers alike

by making television available anywhere on a property and on devices of the viewers' choosing.

II. The Commission Should Reaffirm That All Equipment Used By Consumers To Access The Licensed Programming Of Their Choice Is Covered By The “Right To Attach” Principle

Commission Rule 76.1200(c) defines a “navigation device” in relevant part as any device or “other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.”⁴ Rule 76.1201, in turn, prohibits MVPDs from preventing the attachment of such navigation devices to an MVPD’s system, unless the MVPD can “raise reasonable and legitimate concerns of electronic or physical harm or theft of service.”⁵ Finally, Rule 76.1202 prohibits MVPDs from doing indirectly what they cannot do directly, i.e., restrict the attachment of navigation devices through “contract, agreement, patent right, intellectual property right or otherwise.”⁶

These Rules should prohibit the conduct Mediacom complains of, i.e., programmers and MVPDs agreeing by contract, or otherwise, to restrict consumer access to programming that the consumer is entitled to view based solely on the consumer’s navigation device.⁷ Mediacom has previously made a similar request for clarification, and although the Commission found the request outside of the scope of the docket in which it was made, the Commission nevertheless took that “opportunity to remind” programmers and MVPDs of their obligations under the

⁴ 47 C.F.R. § 76.1200(c).

⁵ *Id.* at § 76.1201; *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996*, 13 FCC Rcd. 14774, ¶ 38 (rel. July 1, 1998).

⁶ 47 C.F.R. § 76.1202.

⁷ *See* Petition at 17 (requesting that the Commission expressly bar agreements that would prevent consumers from accessing the content of their choice based solely on consumers’ attachment of lawful navigation devices).

Commission's rules.⁸

Nevertheless, in the *Third Report and Order*, the Commission noted that its "efforts to date have not developed a vigorous competitive market for retail navigation devices that connect to subscription video services."⁹ The Commission, however, recognized that it has "a responsibility under the Act to assure the development of a retail market for devices that can navigate cable services" and it intends to "strictly enforce our navigation device rules."¹⁰

Although the *Third Report and Order* was focused on retail set-top boxes that competed with MVPD set-top boxes, the same pro-competitive and pro-consumer reasoning can be extended to technology solutions provided by companies like Philo that enable a host of devices to connect to subscription video services. It is simply a question of how the Commission defines the "market for retail navigation devices." As noted above, Philo's technology solutions permit authenticated viewers to attach personal computers, tablets, mobile phones, and other streaming navigation devices without the need of set-top boxes, while at the same time ensuring that only authorized viewers gain access to licensed content. And there can be no question that there is vigorous competition – and innovation – in the market for computers, tablets and mobile phones that can function as navigation devices when coupled with Philo's technology and equipment.

The Commission therefore has an opportunity in this rulemaking to pave the way for even more innovation and more consumer choice by simply reaffirming that any equipment – whether used alone or together with the equipment and technology of a company like Philo – that

⁸ *In the Matter of Tivo Inc.'s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(B)(4)(III)*, Memorandum Opinion and Order, 27 FCC Rcd. 14875 ¶13, n. 55 (Nov. 28, 2012).

⁹ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Available of Navigation Devices Compatibility Between Cable Systems and Consumer Electronics Equipment*, 25 FCC Rcd. 14657, ¶ 4 (Oct. 10, 2010) ("*Third Report and Order*").

¹⁰ *Id.*, ¶ 1, 28.

is used to access multichannel video programming is a navigation device entitled to the protections of the Commission's navigation device rules.

CONCLUSION

For all of the foregoing reasons, Philo respectfully requests that the Commission issue an Order in this proceeding consistent with the recommendations set forth above.

Respectfully submitted,

s/ _____
Alan G. Fishel
Adam D. Bowser
Arent Fox LLP
1717 K Street NW
Washington, DC 20036-5342

s/ _____
Robert St. John Roper
The Unlaw Firm
PO Box 6374
Denver, CO 80206
Counsel for Philo, Inc.