



December 15, 2014

**Via Electronic Filing**

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

**Re: *Video Device Competition, 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)***

Dear Ms. Dortch:

For nearly two decades, Section 629 of the Communications Act has directed the Commission to assure the commercial availability of equipment used to access services provided by multichannel video programming distributors (“MVPDs”).<sup>1</sup> By the Commission’s own account, this mandate largely has gone unfulfilled.<sup>2</sup> Now, moreover, the CableCARD regime that has served as the Commission’s primary effort to effectuate Section 629 is coming to an end as Congress has enacted legislation phasing out the requirement, and MVPDs are turning to interactive, Internet protocol-based (“IP”) methods of delivering content.<sup>3</sup>

Although the CableCARD regime is ending, Section 629 still has an important place in the new world of IP-delivered content. While a number of companies have developed retail devices for viewing limited MVPD video content on televisions, only a few have had sales success, and none is able to offer users an integrated viewing experience comparable to what MVPDs promote with their own navigation devices. The

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<sup>1</sup> 47 U.S.C. § 549(a).

<sup>2</sup> *Implementation of Section 304 of the Telecommunications Act of 1996, et al.*, Fourth Further Notice of Proposed Rulemaking, 25 FCC Rcd. 4303, ¶ 1 (2010) (“2010 Notice”) (acknowledging that the “Commission has not been fully successful in implementing” Section 629).

<sup>3</sup> *See generally Implementation of Section 304 of the Telecommunications Act of 1996, et al.*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd. 14657, ¶ 8 (2010) (noting the Commission’s effort to “make the existing CableCARD standard work” until a “successor technology” is available); *2010 Notice* ¶ 1 (beginning the “process of instituting a successor” to CableCARD and proposing “new rules designed to improve the operation” of CableCARD “until the successor solution becomes effective”).

sad fact is that nearly 20 years after the enactment of Section 629, and amid fast-evolving, competitive markets for virtually all other categories of consumer electronics, MVPD customers still lack robust, competitive options for navigation devices.

Consistent with the ongoing mandate of Section 629, Congress's new directive, and recent calls from numerous voices, the Commission should update its rules to promote device competition in the IP environment. In the recent reauthorization of STELA, for example, Congress directs the Commission to create a working group comprised of a wide range of technical experts to "identify, report, and recommend performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform, and technology- and platform-neutral software-based downloadable security system designed to promote the competitive availability of navigation devices in furtherance of section 629."<sup>4</sup> Commenters in Commission proceedings also stress the need for reform, highlighting that the absence of a healthy market for set-top devices restricts competition from both new MVPDs and online video distributors.<sup>5</sup>

Rules with industry-wide applicability, as Section 629 requires, are essential. The Commission should promote development of open, standard protocols that allow for devices that let consumers fully benefit from their MVPD subscriptions while integrating content accessed from the Internet or over-the-top providers. In this environment, consumers will have a real choice whether to lease a navigation device from their MVPD or to use a navigation device purchased from a third-party. If they so choose, consumers will be able to use a lower-cost or technically superior device that receives all of the MVPD programming they are paying for; is able to time-shift programming; integrates Internet-delivered content; and has a user interface that can be tailored to their needs and interests. These consumer options in turn will encourage demand for new devices, unlocking the innovation that characterizes IP-enabled products and services generally, but has yet to develop for navigation devices.

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<sup>4</sup> STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014).

<sup>5</sup> See, e.g., Petition to Deny of Comptel, MB Docket No. 14-57, at 23 (filed Aug. 25, 2014) (expressing concern about the market for third-party devices and increased costs for small MVPDs "seeking to use those devices as a solution for providing their consumers with a better, more unified, MVPD/OVD experience"); Petition to Deny of Free Press, MB Docket No. 14-57, at 52 (filed Aug. 25, 2014) (noting the potential for increased incentives to promote one device platform over others); Petition to Deny of Netflix, Inc., MB Docket No. 14-57, at 73-74 (filed Aug. 25, 2014) (discussing how online video distributors could be impeded from accessing third-party devices); Petition to Deny of Public Knowledge and Open Technology Institute, MB Docket No. 14-57, at 36 (filed Aug. 25, 2014) (noting concerns about "gatekeeper power" over set-top boxes); Comments of TiVo Inc. in MB Docket No. 14-90 (filed Sept. 16, 2014) (calling for compliance with Section 629 by giving equal support to retail devices).

Google Inc. Ex Parte  
Dkts. 10-91, 97-80, 00-67  
December 15, 2014

Please do not hesitate to contact me if you have questions about these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin C. Schlick".

Austin C. Schlick  
*Director, Communications Law*

cc: *Via Electronic Mail*  
Chairman Tom Wheeler  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O'Rielly  
William Lake