

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Media Bureau Seeks Comment on)	MB Docket No. 15-64
DSTAC Report)	
)	

COMMENTS OF COMPTEL

Angie Kronenberg
COMPTEL
1200 G Street, NW
Suite 350
Washington, DC 20005
(202) 872-5745

October 8, 2015

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Media Bureau Seeks Comment on)	MB Docket No. 15-64
DSTAC Report)	
)	

COMMENTS OF COMPTTEL

COMPTTEL, by its undersigned counsel, hereby submits these Comments in response to the Media Bureau’s Public Notice seeking comment on the DSTAC Report.¹

I. INTRODUCTION

As the preeminent national industry association for competitive communications networks and service providers, COMPTTEL represents wireline and wireless providers in the broadband marketplace. Such providers include, for example, companies providing fiber-to-the-home as the third residential wireline provider in their communities in competition to the incumbent cable provider and the telephone company; transit providers that carry broadband and Internet traffic; and online video distributors (OVDs) that offer video programming over broadband Internet access services to consumers.

¹ Media Bureau Seeks Comment on DSTAC Report, Public Notice, MD Docket No. 15-64, DA 15-982 (rel. Aug. 31, 2015).

Chairman Wheeler has made competition, particularly broadband competition, the central theme of this Commission:

So let's be clear. We're not going to let up on protecting and promoting broadband competition.

As I have made plain on innumerable occasions, competition is paramount. It is the best assurance of industry dynamism, that opportunities for improvements in quality and reductions in cost will be pursued assiduously, and that the benefits will be shared with consumers.

Suffice it to say, continuing to protect and encourage a competitive marketplace is the foundational requirement of the modern FCC.²

COMPTEL could not agree more that protecting and promoting broadband competition is absolutely necessary to ensure investment, innovation, and consumer benefits.

Residential wireline broadband competition, however, is lacking. The Commission's own data concerning the availability of wireline broadband network options for residential broadband Internet access service suggests that only 12 percent of households have three or more choices; 27 percent of households have just two provider choices (typically the incumbent cable provider and incumbent telco); and 45 percent of households have only one single provider—in other words, no competitive choice.³ It is imperative that the Commission address the issues that are impacting the availability of competitive broadband networks that can serve residential

² Prepared Remarks of FCC Chairman Tom Wheeler, The Brookings Institution, at 4 (June 26, 2015).

³ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, at ¶ 83 (2015).

consumers. It is broadband competition that will drive innovation and investment, and competitive choice with three or more broadband networks will best serve consumers.

The Commission has long recognized that residential consumers continue to prefer to purchase both broadband and linear video services together in a bundled product.⁴ As such, competitive networks must provide competitive linear video services—not just broadband services, in order to compete head-to-head with other wireline providers in the residential marketplace—and to achieve higher broadband adoption rates by consumers. As COMPTTEL recently has discussed, it is important that the Commission address the long-standing issues with the availability of video programming at reasonable and non-discriminatory rates, terms, and conditions in order to promote broadband competition.⁵ Moreover, the availability of competitive video navigation devices is crucial to the delivery of competitive video services.

COMPTTEL is a member of the Consumer Video Choice Coalition (“Coalition”) and fully supports the comments submitted today by the Coalition that urge the Commission to initiate a rulemaking proceeding to establish an updated technical standard that allows consumers to use the navigation devices of their choice in accordance with the goals of Section 629 so that a

⁴ See, e.g., *National Broadband Plan*, at 38. Indeed, when smaller carriers are able to offer video and broadband services together, data shows that broadband adoption increases by 24%. COMPTTEL, ITTA, NTCA letter to Chairman Thune on Video Reform, June 22, 2015, available at <http://www.ntca.org/images/stories/Documents/videohearingletter.pdf>.

⁵ See Reply Comments of COMPTTEL, GN Docket No. 15-191, at 15-21 (filed Sept. 30, 2015) and Reply Comments of COMPTTEL, MB Docket No. 15-158, at 2-7 (filed September 21, 2015) (describing the significant impediments to obtaining video programming at reasonable and non-discriminatory rates, terms, and conditions).

competitive market for video navigation devices will flourish, and as discussed below, will promote competition in the video and broadband marketplace.⁶

II. A COMPETITIVE MARKET FOR VIDEO NAVIGATION DEVICES WILL PROMOTE VIDEO COMPETITION AND THE AVAILABILITY OF COMPETITIVE BROADBAND NETWORKS.

The availability of competitive video navigation devices is limited for new or small MVPDs. The lack of access at competitive prices to advanced, innovative video navigation devices remains an impediment to new entrants or competitors lacking scale in the MVPD marketplace. As previously discussed by the Consumer Video Choice Coalition:

Today, large MVPDs benefit from economies of scale. Set-top box manufacturers are incentivized to focus on orders from these larger MVPDs, while small MVPDs are left with high costs if they want to offer devices different from those of the major operators due to their smaller subscriber bases over which to spread costs. Robust retail competition would allow manufacturers to take advantages of economies of scale over a larger base of retail navigation device users—ultimately lowering costs of new entrants and other small network operators to acquire innovative navigation devices.⁷

By promoting increased retail availability of and competition among video navigation devices, device costs potentially decrease for new broadband entrants, which are presented with more options and greater economies of scale, and for consumers, who can choose to purchase their devices themselves. Indeed, robust retail competition among video navigation devices potentially lowers the costs for consumers to switch MVPDs and would further encourage video and broadband competition in the marketplace. When consumers can take their devices with

⁶ See Consumer Video Choice Coalition Comments, MB Docket No. 15-64 (filed Oct. 8, 2015).

⁷ Consumer Video Choice Coalition Comments, MB Docket No. 15-158, at 7 (Aug. 31, 2015).

them, they can maintain the content they have purchased and any customized settings—a boon for consumers who do not want to lose their preferences when changing video providers.

Moreover, as the Commission is well aware, the way Americans access video services continues to evolve. While many Americans continue to rely upon traditional broadcast television, cable, and satellite services, the growth of on demand, streaming and other OVD services, such as Hulu, Netflix, and Amazon Prime continues to grow. Moreover, some providers, such as Dish, have begun to offer a competitive linear service over the Internet. However, most consumers that use OVDs currently do so as a complement to their MVPD service and/or over-the-air broadcast television.⁸

COMPTTEL believes that the development of OVD options is good for consumers, for video competition, and for broadband deployment and adoption.⁹ There is significant potential for competition and consumer choice in the availability of online video. However, as long as large incumbent cable operators control the development and distribution of set-top boxes, they can deter consumers from accessing independent content over their set-top boxes and televisions. It is not in the interest of these providers to ensure that consumers can easily access the over-the-top content they desire, along with the providers' MVPD offering, over their set-top boxes and for easy viewing on their large, flat-screen televisions. However, with a robust, competitive

⁸ Netflix Comments, MB Docket No. 15-158, at 2 (*citing* SNL Kagan, which predicts that only 7.6 million of the 118.9 million television households in the U.S. rely exclusively on online video).

⁹ Indeed, such developments potentially could decrease the need for broadband Internet access service providers to also offer a separate MVPD service to attract broadband subscribers. However, at this time, approximately only 6% of U.S. TV households rely exclusively on over-the-top video. *Id.* at n.4 (*citing* SNL Kagan Survey).

marketplace for video navigation devices where consumers can easily purchase and install these devices so they operate with the content of the MVPD provider they choose, manufacturers will produce devices that can access over-the-top services, apps, and content alongside content received as part of an MVPD subscription.

History shows that when consumers have options for consumer electronics that they can attach to the networks they use, innovation and investment flourishes. The importance of consumers' ability to choose their own devices has been a central part of the Commission's policy for nearly fifty years, at least since its landmark decision in *Carterfone*.¹⁰ That decision, which first recognized consumers' rights to attach non-harmful customer equipment to a telephone network, revolutionized telephony (not just the telephone) and led directly to the massive innovation that followed.¹¹ By allowing third parties to innovate, the Commission "cleared the way for the rapid deployment of the modem."¹² As residential modem use spread, so did the use of the public Internet. In fact, "it is likely that the Internet would have been unable to develop"¹³ without *Carterfone* and the principles it embodies.

Seeing the massive consumer benefits that flowed from *Carterfone*, Congress adopted an open access policy for navigation devices used to access multichannel video services in Section

¹⁰ See Use of the Carterfone Device in Message Toll Telephone Service, *Decision*, 13 F.C.C. 2d 420 (1968).

¹¹ See, e.g., Matthew Lasar, *Any Lawful Device: 40 Years After the Carterfone Decision*, *Ars Technica* (June 26, 2008), <http://arstechnica.com/tech-policy/2008/06/carterfone-40-years/>.

¹² Jason Oxman, *The FCC and the Unregulation of the Internet* 14 (Office of Plans and Policy, FCC, OPP Working Paper No. 31, 1999), available at http://transition.fcc.gov/Bureaus/OPP/working_papers/oppwp31.pdf.

¹³ *Id.*

629 of the Telecommunications Act of 1996.¹⁴ As the House Committee explained, “competition in network navigation devices and other [CPE] is an important national goal” that it believed would lead to “innovation, lower prices and higher quality” services for consumers.¹⁵ In adopting implementing regulations, the Commission echoed this sentiment, noting that the “competitive market for consumer equipment in the telephone context provides the model of a market we have sought to emulate.”¹⁶ This policy is intuitive. The device ecosystem benefits from both competition and innovation, and consumer welfare is best achieved by creating the potential for choice, rather than relying on a single firm. Unfortunately, despite actions by Congress and the FCC, a competitive market for navigation devices has not developed.

However, the Commission has an opportunity to build upon the detailed work of the DSTAC where many parties, representing a number of interests, offered their expertise to finding a successor security solution to the CableCARD. Congress’ goal for this working group was for it to recommend a software-based security solution that is technology and platform neutral that is designed to promote competition.¹⁷ While the DSTAC could not agree on a common recommendation, the Commission should not be deterred from moving forward with initiating a rulemaking proceeding to achieve a result that will provide more options for consumers.

¹⁴ Telecommunications Act of 1996, Pub. L. No. 104–104, § 629, 110 Stat 56, 125 (codified at 47 U.S.C. § 549).

¹⁵ H.R. Rep. No. 104-204(I), at 112 (1995), *reprinted in* 1996 U.S.C.C.A.N. 10, 79-80.

¹⁶ Implementation of Section 304 of the Telecommunications Act of 1996, *Report and Order*, 13 FCC Rcd 14775, 14780 ¶ 11 (1998).

¹⁷ *See* STELA Reauthorization Act of 2014, Pub. L. No. 113-200, §106, 128 Stat 2059, 2063.

As discussed in the Coalition’s comments, today consumers are spending approximately \$20 billion annually in set-top box rental fees, and they are limited by the viewing and menu options given to them by their providers.¹⁸ Consumers could be reaping the benefits we have seen in the mobile wireless industry as devices have evolved over time to provide email, broadband Internet access, mobile applications, and so much more, and where they can choose to purchase or lease their mobile device and have numerous manufacturers’ devices at different price points and styles from which to choose.¹⁹ To achieve a similar result for video navigation devices, the Commission should propose in its rulemaking the “Competitive Navigation” downloadable security solution as it will best facilitate retail competition of video navigation devices, whereas the “App-Based” approach would only entrench the status quo of large incumbent cable operators determining how consumers interact with competitive video services over their set-top boxes.²⁰

By doing so, consumers will benefit—it will lead to more choice for their device, as well as content choice and control over the device. The potential for consumers to pick and choose their content from multiple platforms to watch over their televisions is significant—it will transform the consumer’s experience when they can choose any content over-the-top or from the linear product offered by their MVPD. Moreover, the availability of competitive devices will

¹⁸ Consumer Video Choice Coalition Comments, MB Docket No. 15-64, at 4 (filed Oct. 8, 2015).

¹⁹ *See Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Seventeenth Report, 29 FCC Rcd 15311, ¶ 77 (2014).

²⁰ *See* Consumer Video Choice Coalition Comments, MB Docket No. 15-64, at 11-14 (filed Oct. 8, 2015).

lower the costs for competitive MVPDs that are bringing new or expanded broadband networks to their communities, and as more consumers use OVD products, broadband adoption, including higher speed broadband products, likely will increase.

III. CONCLUSION

The Commission should initiate a rulemaking proceeding and propose to adopt the “Competitive Navigation” downloadable security solution from the DSTAC Report, which will promote more retail competition for video navigation devices. In doing so, the FCC will be promoting more choices for consumers with respect to their devices and how and from what sources they consume content. New and small broadband network providers also will benefit from additional set-top box options and potentially lower their costs as consumers purchase their own navigation devices.

Respectfully submitted,

COMPTEL

/s/Angie Kronenberg

Angie Kronenberg

COMPTEL

1200 G Street, NW

Suite 350

Washington, DC 20005

(202) 872-5745

October 8, 2015