

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

In the Matter of)	
)	
The Downloadable Security Technical)	MB Docket. 15-64
Advisory Committee Report)	
)	

COMMENTS OF CONSUMERS UNION

I. Introduction

Consumers Union appreciates the opportunity to provide comment on the FCC’s Downloadable Security Technical Advisory Committee (DSTAC) Report. For years, Consumers Union has advocated for policies that promote competition, protect consumer access to services, and limit anti-competitive measures by ISPs and MVPDs. Although DSTAC is a technical and not a policy advisory body, the establishment of technical standards for the reception and control of video content has significant implications for the pro-consumer and pro-competition policy objectives of Section 629 of the Communications Act and plays an important role in promoting a vibrant retail market for third-party video devices. We urge the Commission to proceed with developing a universally relied-upon standard that ensures that design and licensing of technology is not controlled by only a few special interests. Any “downloadable security” system that serves as a modern replacement for CableCARD should ensure that (1) consumers can access the MVPD content they have paid for on the device of their choice, (2) third-party box manufacturers have access to set-top box technology that allows them to compete in areas beyond simply supplying access to linear cable content, and (3) devices that have served as

successful replacements for cable boxes and depend on CableCARD technology continue to operate.

II. Cable Companies Have a History of Objecting to Measures That Would Promote Competition in the Retail Video Device Market

Cable companies have a long history of objecting to measures that would promote competition in the retail video device market. In 1996, Congress directed the Commission to pass rules necessary to create an independent market for the equipment necessary to connect to cable networks and access content. Unfortunately, the Commission's subsequent CableCARD standard has had limited success in spurring competition, due in significant part to the cable industry's efforts to maintain control over the technology and the consumer viewing experience. The resulting lack of competition in the market harmed consumers and continues to harm them today. Consumers have no practical alternatives to renting set-top boxes that can access MVPD content, innovation and competition are limited, and prices remain artificially high. Now, MVPDs seek to replace CableCARD with an inflexible standard that has the potential to shut out disruptive technologies that can improve products and services for consumers.

The promise for competition in the video device market will come not just from MVPDs, but also from other entrepreneurial companies that offers video in a manner more appealing to consumers. For this reason, any technical recommendations from DSTAC should not restrict the ability of third-party device markets to compete successfully. A "not unduly burdensome" solution, as defined by DSTAC, should be one where third-party devices are not saddled with cumbersome and unnecessary requirements that first-party devices are not subject to—for instance, a third-party set-top box should not have to contain the internal circuitry necessary for it to function as an IPTV, satellite TV, and cable converter, or be required to present a user interface designed by another company, delivered via an "app" or otherwise. MVPDs have

profited significantly from the lack of choice in set-top boxes at the expense of consumers and should not play the role of gatekeeper in the process of certifying devices, designing the features or interface of third-party devices, or determining the overall functions of any technical standards. Without Commission action, there is a real danger that innovative developments will be hampered by unduly restrictive or overly burdensome obstacles by third parties who wish to provide disruptive technologies that compete with MVPD boxes.

III. Consumers Have Suffered From A Lack of Competitive Options in the Retail Set-Top Box Market

We disagree with commenters who suggest in various proceedings before the FCC that the video device market is thriving and that consumers are happy with the leased set-top box options available to them.¹ Consumers have been forced to accept whatever set-top box that their operator provides to them, with generally little to no ability to go to a retail store to buy the set-top box of their choice. While there are many devices that allow consumers to stream online content to their televisions, the fact remains that consumers who subscribe to cable content have little to no practical alternative to leasing equipment from their MVPD. For years, Consumer Reports has reported on the shortcomings of operator-provided set-top boxes, including the sluggish response when navigating menus or channels, outdated and unintuitive menus, and unreliable DVRs that crash frequently or fail to properly record programs.² Furthermore, at Consumers Union, we have had the opportunity to hear the experiences of consumers first-hand. Consumers have shared countless stories of their experiences with outdated or non-functioning equipment, hours spent with service technicians, difficulties with installation, long customer-service wait times and other associated difficulties with returning boxes, and unwarranted charges for the use of outdated, incompatible, and even already-returned equipment. Although

¹ Reply Comments of NCTA, MB Docket No. 15-158, September 21, 2015.

² See, e.g., <http://www.consumerreports.org/cro/news/2014/03/4-reasons-you-hate-cable-boxes/index.htm>.

the cable companies may argue that many of these problems will be resolved as functionality moves to the cloud, consumers' negative experiences with set-top boxes demonstrate the significant consumer harms that can occur when MVPDs are in a position to maintain control over the viewing experience and make it difficult for new entrants to offer alternatives.

IV. There is Great Consumer Demand for Additional User Interfaces and Features

DSTAC explored the question of whether a consumer should be able to access an MVPD's content only through the MVPD's own user interface or whether third party retail devices can present those services with their own separate user interfaces. MVPDs argue that to allow third parties to build their own user interfaces would deprive consumers of the many cutting edge features that MVPDs have developed and that consumers want. We disagree and note that, to the contrary, there is great consumer demand for additional features beyond what cable companies have made available.

Consumers have expressed frustration not only with the cost of equipment and lack of choice in the set-top box market, but also the features and interfaces of the set-top box systems made available to them. For example, one consumer noted that the search feature on his set-top box was "so slow and clunky so as to be useless," while another noted that the rewind function would unexpectedly cause the set-top box to crash "at least once a day."³ The main take-away from the countless stories we have received is that consumers would welcome additional options and features by third parties that would improve the consumer experience.

In order to achieve meaningful differentiation in the set-top box market, manufacturers must be able to implement systems with features that are meaningfully different from each other. We agree with virtual head-end proponents that the design of the user interface is one such feature that has the ability to impact the adoption of retail navigation set-top boxes. There is little

³ These stories are on file with Consumers Union and can be made available to the Commission upon request.

reason for a consumer to buy a third-party device that is nothing more than a display terminal for a user interface designed and controlled by their MVPD. Similarly, a third-party device maker should not need to get permission from an MVPD to allow consumers to control when, where, and how they view the video content they pay for. In other electronics markets, different companies compete for customers on the basis of not only price, but features, user experience, and aesthetics. Technical recommendations that do not allow third-parties the opportunity to meaningfully compete on these factors would not assist the Commission in carrying out the goals of Section 629.

V. Cable Companies are Reluctant to Allow Competitors to Offer Integrated Content

For years, cable operators made it difficult to integrate MVPD content and cable content through the same convenient interface.⁴ Comcast, for example, points to the ability to integrate content from various sources (albeit only the ones it retains control over) as a unique innovation and benefit of its X1 platform, billing it as an improvement over platforms “where the customer has to jump from one programmer app to another” or one that “deprive[s] customers of access to online content that is not available through a separate programmer app.”⁵ MVPDs have acknowledged the benefits of this approach and should not be permitted to choke off the ability of third party manufacturers from doing the same and providing highly desirable features, especially in light of the high consumer demand for better set-top box features.

Allowing non-MVPDs to innovate in the ways explained above could have real benefits for consumers. Consumers themselves have noted the difficulty of accessing the best content at the best price through their cable boxes. For example, some consumers have written to us observing that the on-demand content made available by the cable company through the set-top

⁴ Marvin Ammori, *Copyright's Latest Communications Policy: Content-Lock-Out and Compulsory Licensing for Internet Television*, 18 COMMLAW CONSPECTUS 375, 379 (2010).

⁵ Filing of Comcast Corporation, MB Docket No. 14-57 at 6 (Apr. 13, 2015).

box is more expensive than the options made available by non-MVPD alternatives and express frustration about the difficulty of accessing the cheapest content. A third-party interface that allows the consumer to search across all services to select content for viewing instead of within each app separately would significantly aid consumers in finding the widest range and most reasonably-priced content available to them, and is just one example of additional functionality that is in high demand by consumers – but that, because of a lack of competition, has been slow to arrive or comes at a steep price.

VI. Conclusion

Consumers have no practical alternatives to renting set-top boxes that can access MVPD content. We are concerned about MVPD efforts to replace CableCARD with an inflexible standard that has the potential to shut out disruptive technologies that can improve products and services for consumers. The time is ripe for the Commission to develop a universally relied upon standard that ensures that design and licensing of technology is not controlled only by a few special interests.

Respectfully submitted,

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