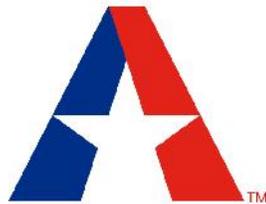


**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of )  
 )  
Public Notice on Final Report of the )  
Downloadable Security Technical Advisory ) MB Docket No. 15-64  
Committee )  
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**COMMENTS**



**AMERICAN CABLE**  
A S S O C I A T I O N

Matthew M. Polka  
President and Chief Executive Officer  
American Cable Association  
Seven Parkway Center  
Suite 755  
Pittsburgh, Pennsylvania 15220  
(412) 922-8300

Mary C. Lovejoy  
Vice President of Regulatory Affairs  
American Cable Association  
2415 39th Place, NW  
Washington, DC 20007  
(202) 603-1735

Ross J. Lieberman  
Senior Vice President of Government Affairs  
American Cable Association  
2415 39th Place, NW  
Washington, DC 20007  
(202) 494-5661

Barbara S. Esbin  
Cinnamon Mueller  
1875 Eye Street, NW  
Suite 700  
Washington, DC 20006  
(202) 872-6811

October 8, 2015

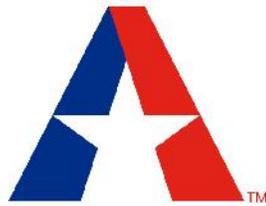
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**COMMENTS**



**AMERICAN CABLE  
ASSOCIATION**

**I. INTRODUCTION AND BACKGROUND**

The American Cable Association (“ACA”) hereby submits its comments in response to the Media Bureau’s Public Notice seeking comment on the Final Report submitted to the Federal Communication Commission (“Commission” or “FCC”) by the Downloadable Security Technical Advisory Committee (“DSTAC” or “the Committee”).<sup>1</sup> Section 106(d) of the Satellite Television Extension and Localization Act Reauthorization Act of 2014 (“STELAR”) directed the FCC Chairman to “establish a working group of technical experts representing a wide range of stakeholders, to identify, report and recommend performance objectives, technical capabilities,

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<sup>1</sup> *Media Bureau Seeks Comment on DSTAC Report*, Public Notice, MB Docket No. 15-64, DA-15-982 (rel. Aug. 31, 2015).

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.”<sup>2</sup> Unfortunately, the Committee selected to fulfill this mandate failed on several counts: the Committee itself was not widely representative, its Final Report goes well beyond the Committee’s mandate to make recommendations regarding downloadable security solutions, and one of the recommendations presented by Working Group 4 (“WG4”), the “Competitive Navigation” System proposal (“Device Proposal”), would be “unduly burdensome” to all multichannel video programming distributors (“MVPDs”) in general, and to small and medium-sized MVPDs in particular, thus contravening Congress’s mandate.

ACA represents over 800 small and medium-sized cable operators, incumbent telephone companies, municipal utilities, and other local providers of multichannel video programming services, as well as voice and broadband Internet access services. These providers offer service in smaller communities and rural areas, as well as by competing head-to-head with other providers in urban and suburban markets. In aggregate, ACA members pass nearly 19 million homes and serve nearly 7 million homes with one or more services. Half of ACA members have fewer than 1,000 subscribers in total.

As a threshold matter, noticeably absent from the “wide range of stakeholders” that sat on the Committee was any employee or representative from what would be considered a small or medium-sized MVPD, or anyone who’s primary objective was to represent the interests of small and medium-sized MVPDs.<sup>3</sup> The lack of representation by smaller operators is most

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<sup>2</sup> Satellite Television Extension and Localism Act Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat 2059, § 106(d) (2014) (“STELAR”).

<sup>3</sup> This absence is unfortunate, and is not due to any lack of interest among smaller MVPDs. ACA nominated two candidates – Patrick Murphy, EVP and Chief Technical Officer of RCN, Grand Communications, and Choice Cable TV, and Jason Hansen, Chief Technology Officer of Conway Corporation – to participate on the Committee, believing that the Committee would greatly benefit from the experience of one or more individuals that personally understand the technical limitations of the systems operated by smaller operators, and the significant burdens associated with managing and

apparent in recommendations put forth by some stakeholders on the Committee that would require MVPDs to implement highly sophisticated technical standards and protocols. These recommendations do not adequately acknowledge the difficulties that MVPDs in general would face in meeting these standards and protocols, but in particular do not address the additional challenges that would be faced by smaller operators.

ACA focuses these comments in particular on the Device Proposal described in the WG4 Report. From a substantive perspective, WG4's examination of the non-security functions of MVPD service goes well beyond Congress's mandate to make recommendations regarding downloadable security solutions, and undermines Congress's purpose in repealing the so-called "set-top box integration ban,"<sup>4</sup> which was to reduce consumer costs and promote innovation and investment in new technologies.<sup>5</sup> Moreover, the Device Proposal explicitly contravenes Congress's directive that the solutions offered not be "unduly burdensome," by imposing technical mandates that would require MVPDs to invest millions of dollars to upgrade and re-architect their networks.

The Device Proposal also incorrectly assumes that all MVPDs are currently operating at a level of sophistication that few beyond the very largest operators have thus far reached. The proposal begins from the supposition that all MVPDs have transitioned, or are in the process of transitioning, to IP delivery of video services. While this is the case for a number of MVPDs, most others, including some that are still operating analog or hybrid analog/digital systems, are

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upgrading these systems. The Commission, however, elected not to appoint these or any other representatives from small operators.

<sup>4</sup> The set-top box integration ban specifically prohibited MVPDs offering navigation devices that "perform both conditional access and other functions in a single integrated device," 47 C.F.R. 76.1204(a)(1).

<sup>5</sup> See 160 Cong. Rec. H8085 (daily ed. Nov. 19, 2014) (statement of Rep. Walden) ("[Sunset of the FCC's integration ban] clears the way for innovation and new investment by lifting an unnecessary regulatory burden that has cost the cable industry and its consumers \$1 billion.").

years away from transitioning to IP, which would today require the investment of millions of dollars in network upgrades.

Finally, the Device Proposal runs counter to good regulatory policy, which favors flexibility and free market principles over technical mandates. The market for video programming is more competitive than ever and consumers have real choice in both video service providers and consumer electronics that can be used to access video programming. The demand for retail navigation devices has moved away from the traditional set-top box model, and has grown organically in ways that could not have been anticipated just a few years ago. There is simply no need for further regulation to encourage competition in an already flourishing marketplace.

For these reasons, the Commission need not take any further action at this time to promote the commercial availability of navigation devices, and it certainly should not base any rulemaking activity on the Device Proposal. Rather, the Commission should take its guidance from the seven points of agreement contained in DSTAC's Report, which collectively ought to give the Commission extreme pause before even considering the adoption of any technology mandates for navigation devices.

## **II. WORKING GROUP 4 EXCEEDED THE EXPRESS DIRECTIVE OF STELAR BY EXAMINING NON-SECURITY FUNCTIONS RATHER THAN CONFINING ITSELF TO DOWNLOADABLE SECURITY**

In December of 2014, Congress repealed a portion of section 76.1204(a)(1) of the Commission's rules, which prohibits an MVPD from "plac[ing] in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device."<sup>6</sup> Congress's repeal of this prohibition – the "integration ban" – was a bipartisan recognition that the outdated rule had "increased the cost of cable-leased set-top

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<sup>6</sup> STELAR, § 106(a).

boxes”<sup>7</sup> and “caused significant energy inefficiencies.”<sup>8</sup> At the same time, Congress directed the FCC Chairman to establish a working group “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.”<sup>9</sup> This limited mandate was designed to promote a voluntary, industry-driven successor to the costly and inefficient CableCARD technology, which has cost consumers more than \$1 billion since 2007.<sup>10</sup>

Unfortunately, the Committee’s work extended far beyond this well-defined directive. At the urging of the Commission staff, the Committee dedicated an entire working group – Working Group 4 – to the examination not of the downloadable security solutions contemplated by Congress, but of the *non-security elements* of MVPD service. WG4 identified fifteen separate non-security functions that may be integrated into MVPD service, functions that MVPDs use to attract customers and differentiate their services.<sup>11</sup> WG4’s discussion of the non-security functions that are integrated into and form the core of an MVPD’s service goes well beyond Congress’s mandate to identify a downloadable security system. There is no technical need for any downloadable security solution to involve these non-security functions, and the work of WG4 was not necessary for the Committee to satisfy its mandate.

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<sup>7</sup> 160 Cong. Rec. H8084 (daily ed. Nov. 19, 2014) (statement of Rep. Upton).

<sup>8</sup> *Id.* (statement of Rep. Green).

<sup>9</sup> STELAR, § 106(d).

<sup>10</sup> See Statement of Rep. Walden, *infra* at n. 4.

<sup>11</sup> These functions include: tuning and viewing a linear channel, viewing on-demand (“VOD”) content, tuning and viewing pay-per-view events, navigation, recording linear content, remote management by consumer, set-top box set-up, customer support and remote management by service providers, installation and provisioning, device operations requirements, user authentication, cloud VOD delivery, cloud live streaming, cloud DVR recording and streaming, cloud content downloading for mobile devices.

The WG4 Report not only exceeds Congress's mandate, it includes a recommendation that would effectively defeat the purpose of Congress's repeal of the integration ban. The report describes two proposals, the Device Proposal and the "Application-Based Service with Operator Provided User-Interface" System proposal ("App Proposal"). Under the Device Proposal, MVPDs would be required to create and install so-called "virtual headends," resident either in "the cloud" or in new devices that would be installed within a subscriber's home. These virtual headends would "abstract the differences in MVPD network technology into a common interoperable format,"<sup>12</sup> or, in layman's terms, disassemble the MVPD's distinctive service offerings into individual pieces that competing retail device manufacturers could selectively reassemble into a separate service.

As part of the disaggregation of the functions of an MVPD's service, the Device Proposal recommends that MVPDs be required to create an interface for retail navigation devices to access entitlement and usage rights information that would be completely segregated from interfaces that would allow access to information on available video service, and to the content itself.<sup>13</sup> Thus the proposal essentially reinstates and amplifies the recently repealed ban on the integration of conditional access and other functions. The proposal contradicts both the letter and the spirit of STELAR's directive by effectively reinstating the integration ban and creating burdens that far exceed the costly CableCARD system that Congress was attempting to overhaul.

The App Proposal, in contrast, imposes no technical mandates on MVPDs, following an organic approach that relies instead on competitive market forces that already have led to the development of new technologies that have been embraced by consumers. The App Proposal

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<sup>12</sup> Report of Working Group 4 to DSTAC at 107 (Aug. 4, 2015), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-982A6.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-982A6.pdf) ("WG 4 Report").

<sup>13</sup> *Id.* at 112.

describes the availability of downloadable “apps” that enable consumers to watch content from MVPDs and online video distributors on a wide variety of retail devices such as Smart TVs, tablets and smartphones, gaming consoles, PCs and Macs, and media streaming devices (such as Roku boxes). Unlike the Device Proposal, this approach allows MVPDs to develop technologies that support the use of retail devices in a manner that reflects both their own technical capabilities and consumer demand. As explained in the WG4 Report, the App Proposal “enables MVPDs to enhance their networks over time to increase network capabilities, such as increased capacity, device addressability, security, reliability, energy efficiency, quality of service, and operational efficiency.”<sup>14</sup> This proposal comports with Congress’s intent to reduce costs and promote innovation and competition in the market for retail navigation devices.

### **III. THE COMPETITIVE DEVICE PROPOSAL CONTRAVENES STELAR’S MANDATE THAT A UNIFORM DOWNLOADABLE SECURITY SOLUTION NOT BE “UNDULY BURDENSOME”**

The Device Proposal directly contravenes STELAR’s requirement that the Committee’s recommendations not be unduly burdensome, as it would impose incredibly costly obligations on all MVPDs in general, and in particular on smaller operators whose networks are less technically sophisticated than their larger counterparts, and who lack the economies of scale to afford the fixed costs associated with the headend equipment required to implement to Device Proposal.

While the Committee could not reach consensus on many issues, it did reach agreement on a number of overarching principles, among them the idea that “it is unreasonable to expect that MVPDs will modify access networks to converge on a single common security solution,” and that “it is not reasonable to expect that all MVPDs will re-architect their networks to

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<sup>14</sup> *Id.* at 171.

converge on a common solution.”<sup>15</sup> Device Proposal advocates assert without evidence that their proposal would not require “any radical re-architecting of networks because it involves software protocols from either the Cloud or in-home gateways, not network hardware.”<sup>16</sup> But as the proponents of the App Proposal explained:

Rather than requiring “at worst only minor changes,” the Device Proposal calls for re-architecting of much of the MVPDs infrastructure, from back-office systems, to headends, uplinks, and central offices, the delivery platforms, network equipment, content servers, security components, and creating new devices for the home, from scratch. It calls for major inventions for all the system components outlined in the ill-defined proposal. It references at least 37 standards or interfaces that may require extensions, enhancements, or specific usage constraints to be defined – and many of these are either not yet implemented, implemented only in limited ways by a subset of MVPDs, or not intended to work except in a bidirectional system.<sup>17</sup>

These requirements would be difficult enough for even the largest MVPDs to implement in a cost-effective manner. For small and medium-sized MVPDs that have not yet reached the same level of sophistication as their larger counterparts, implementing these proposals is essentially impossible.<sup>18</sup> The proposal would require MVPDs to develop and deploy “virtual headends” containing three separate interfaces: a “Service Delivery Interface” to provide information on video services available to the consumer and devices, a “Content Delivery Interface” to access content over a common network interface, and an “Entitlement Information

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<sup>15</sup> DSTAC Summary Report at 3 (Aug. 28, 2015), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-982A2.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-982A2.pdf).

<sup>16</sup> *Id.* at 185.

<sup>17</sup> *Media Bureau Seeks Comment on DSTAC Report*, MB Docket No. 15-64, Submission for the Record of “Application-Based Service” Advocates at 1 (filed Aug. 7, 2015).

<sup>18</sup> The Commission has previously recognized implementing new technical mandates is more difficult for smaller MVPDs than larger MVPDs. *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, ¶ 114 (2013).

Interface” to access the entitlement and usage rights information of the available services.<sup>19</sup> In addition, MVPDs would be required to develop a new “Man Machine Interface” and to distill parts of their service into new “widgets.” To accomplish this task, MVPDs would, among other things, be required to implement a yet-to-be developed “common platform” for publishing, communicating, sharing and transferring rights information,<sup>20</sup> and to replace existing proprietary conditional access systems with “some common and interoperable means of termination.”<sup>21</sup>

The fact that the Device Proposal assumes a level of sophistication that few MVPDs have reached as a basis upon which to construct additional technology mandates is an indictment of the complete lack of representation of smaller operators on the Committee, and the deleterious effects of their absence on the final product. At the outset, the Device Proposal states that “the migration to IP delivery by operators provides the technical opportunity for a common solution that relies on more than a single implementation of [downloadable conditional access system] while providing full access to MVPD content and services.”<sup>22</sup> Regardless of whether it is true or reflective of good policy, this statement demonstrates a dangerously incomplete understanding of the current and widely varied state of the market for video programming distribution. While some smaller operators, like large ones, are in the process of migrating their service from digital to IP, others have yet to even make the analog-to-digital transition, either fully or at all. Most ACA members are years away from transitioning to all-IP delivery of video services, and those who have succeeded in making that transition to all-IP delivery have reportedly invested millions in network upgrades to reach this point.

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<sup>19</sup> WG 4 Report at 113.

<sup>20</sup> *Id.* at 108.

<sup>21</sup> *Id.* at 109.

<sup>22</sup> *Id.* at 107.

Substantial investments in IP networks are absolutely necessary for implementing a cloud-based virtual headend as contemplated by the Device Proposal. And while the proposal briefly acknowledges that not all MVPDs are capable of IP delivery, it suggests that MVPDs that cannot implement the required interfaces directly from “cloud to ground” can simply “require an additional device in the home that provides the Interfaces for devices on the home network.”<sup>23</sup> This “solution” would essentially replace the existing CableCARD with a yet-to-be invented device that is potentially hundreds of times as costly. This prospect alone, without taking into account the other network modifications the proposal would require, might be sufficient to force many MVPDs to discontinue video service altogether.<sup>24</sup>

While the report itself described some of the variations in network architecture that are present in the market today, proponents of the Device Proposal failed to examine in any depth the disparate challenges that less technically advanced and financially challenged operators would face in implementing the proposal’s requirements. Their claim that the proposal “is an extension of technologies the MVPDs have already deployed and/or have presented to the FCC”<sup>25</sup> ignores the fact that even those technologies that are deployed by some MVPDs have not yet been uniformly adopted across the industry, nor are they likely to be in the near future. Had smaller MVPDs been represented on the Committee, presumably there would have been greater recognition in the Final Report of the very different baseline capabilities of their networks

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<sup>23</sup> *Id.* at 122. See also *id.* at 126 (“[L]egacy and one-way systems can make use of a Provider Interface Device or Gateway to provide the same functionality as end-to-end systems on a local network.”). *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, ¶ 114 (2013).

<sup>24</sup> ACA has previously explained to the Commission that rising programming costs have led to the closure of smaller cable systems throughout the country. See generally Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 15-158, Comments of American Cable Association (filed Aug. 21, 2015). Since 2008, members of the National Cable Television Cooperative have closed down a total of 1,169 cable systems, serving approximately 55,302 subscribers. It would be particularly perverse to require MVPDs to bear the costs of expensive technology mandates when crippling programming fees are already forcing small providers to shutter their systems.

<sup>25</sup> WG 4 Report at 185.

today and some discussion of the impact that the technical requirements of the Device Proposal would have on their video business.

#### **IV. THE COMMISSION'S POLICY ON DOWNLOADABLE SECURITY SHOULD FAVOR FLEXIBILITY AND MARKET PRINCIPLES OVER TECHNICAL MANDATES**

While the DSTAC could not reach consensus on many issues, the group agreed on several points that should give the Commission extreme pause before even considering the adoption of any technology mandates for navigation devices:

- Proposals acknowledge there is a wide diversity in delivery networks, conditional access systems, bi-directional communication paths, and other technology choices across MVPDs (and even within MVPDs of a similar type). It should not be necessary to disturb the potentially multiple present and future CA/DRM2 system choices made by cable, DBS and IPTV systems, which effectively leaves in place several proprietary systems for delivering digital video programming and services across MVPDs.
- None of the proposals recommend a solution based on common reliance.
- Proposals acknowledge that it is unreasonable to expect that retail devices connect directly to all of the various MVPDs' access networks; rather they should connect via an IP (Internet Protocol) connection with specified APIs/protocols, via the MVPD's cloud and/or from within the home.
- Proposals acknowledge that it is unreasonable to expect that MVPDs will modify their access networks to converge on a single common security solution.
- Proposals acknowledge that the downloaded security components need to remain in the control of the MVPD.
- It would not be a step forward or economically viable to require an environment in which a retail manufacturer would have to equip a device with RF tuners for cable and satellite, [and] varied semiconductor platforms, to support the dozen-plus proprietary CAS technologies that are currently in use.
- It is not reasonable to expect that all MVPDs will re-architect their networks in order to converge on a common solution.

These principles reflect a broad consensus that technical mandates impose heavy costs and stifle innovation. This was demonstrated by the implementation of the integration ban, which, as ACA has previously explained, "resulted in higher costs to operators to purchase non-

integrated set-top boxes that, other than separating out the security function, provide no greater consumer functionality.”<sup>26</sup> The integration ban added more than \$1 billion in costs to the price of set-top boxes leased to subscribers by cable operators and slowed the migration of services from analog to digital, but still failed to create a competitive market for retail navigation devices.<sup>27</sup> The CableCARD regime was particularly costly for smaller operators who were least able to absorb the higher costs of new set-top boxes. The Commission should thus be wary of imposing any new technical mandates, lest it make the same costly mistakes that Congress attempted to rectify in repealing the integration ban.

Moreover, technical mandates are not necessary to drive the availability of retail navigation devices capable of receiving multichannel video service. Consumers have more choices than ever in the market for video distribution service, as cable operators now face competition from overbuilders, telecommunications providers, satellite providers, and online video distributors. MVPDs are constantly innovating to attract and retain consumers, including those that are interested in using retail navigation devices to access their video programming service. MVPDs that do not accommodate popular retail navigation devices risk losing their subscribers to their competitors. If the market for retail navigation devices has moved away from the traditional set-top box model to an app-based approach, it is a reflection of consumer preference rather than a lack of competition.

Like their larger counterparts, smaller cable operators are beginning to make their services available to consumers who bring their own devices. Some smaller operators that

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<sup>26</sup> *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Comments of the American Cable Association at 3 (filed Sept. 16, 2013).

<sup>27</sup> *Id.*, citing Rob Pegoraro, *TiVo, media center PC makers alarmed by CableCard-cutting bill*, ARSTECHNICA, Aug. 2, 2013, available at <http://arstechnica.com/tech-policy/2013/08/tivo-media-center-pc-makers-alarmed-by-cablecard-cuttingbill/>.

initially launched their video services over IPTV platforms are offering apps that allow their service to be used on third-party devices.<sup>28</sup> ACA is also aware of at least one smaller operator that originally offered its service over a quadrature amplitude modulation (“QAM”) platform that has made significant investments to make its service available to its customers through an operator-built app. In addition, a significant number of smaller operators are also offering authentication services that allow subscribers to access content directly through a programmer’s website.

An important benefit of the App Proposal is that it allows MVPDs to innovate and evolve in their own time and in the manner that best suits the needs of their subscribers. For traditional cable operators who have many navigation devices in the field capable only of receiving QAM signals, the transition to IP delivery necessarily will occur over a period of years. Market forces will determine the precise pace of the transition so that small cable operators can afford to make the transition in an orderly, non-disruptive, and non-economically burdensome manner.

In contrast, the Device Proposal would require MVPDs to evolve a high level of sophistication almost immediately, requiring millions of dollars of network upgrades in a short span of time. Although advocates of the Device Proposal emphasize that MVPDs will retain flexibility to innovate and experiment with new functionalities,<sup>29</sup> they ignore the significant burdens associated with its implementation; burdens that would be borne entirely by the MVPDs.

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<sup>28</sup> For example, Canby Telecom, a smaller IPTV provider, is offering streamed local broadcast stations and some other independent stations to their customers in a manner that allows the customer to receive such service using a Roku box. See <https://www.canbytel.com/television/ezvideo/>. IPTV vendors like Minerva are also offering turnkey solutions for IPTV providers, including smaller ones, to make their service available over a range of consumer electronics devices. See <http://www.minervanetworks.com/what-is-your-ott-pay-tv-strategy/>.

<sup>29</sup> WG 4 Report at 184.

## V. CONCLUSION

Congress, through STELAR, charged the FCC Chairman to “establish a working group of technical experts representing a wide range of stakeholders, 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.”<sup>30</sup> The DSTAC formed for this purpose produced a report that contains important consensus positions that must guide any future actions by the Commission concerning the question of downloadable security solutions. Most notably, the consensus reflects the view that it is unreasonable to expect either that MVPDs will modify their access networks to converge on a single common security solution or that all MVPDs will re-architect their networks in order to converge on a common solution. This is especially true in the case of smaller MVPDs, who today operate less technologically advanced networks with constrained financial and human resources. Together, the consensus positions counsel that the Commission proceed with great caution before fashioning any technology mandates in this area.

To ensure the continued availability of MVPD service and to avoid the significant costs that MVPDs would incur to comply with unnecessary technical mandates, the Commission must eschew the Device Proposal and permit MVPDs to continue with the flexible, pro-competitive approach that has been developed in the market and is embodied in the App Proposal.

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<sup>30</sup> STELAR § 106(d).

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

By:  \_\_\_\_\_

Matthew M. Polka  
President and Chief Executive Officer  
American Cable Association  
Seven Parkway Center  
Suite 755  
Pittsburgh, Pennsylvania 15220  
(412) 922-8300

Mary C. Lovejoy  
Vice President of Regulatory Affairs  
American Cable Association  
2415 39th Place, NW  
Washington, DC 20007  
(202) 603-1735

Ross J. Lieberman  
Senior Vice President of Government Affairs  
American Cable Association  
2415 39th Place, NW  
Washington, DC 20007  
(202) 494-5661

Barbara S. Esbin  
Cinnamon Mueller  
1875 Eye Street, NW  
Suite 700  
Washington, DC 20006  
(202) 872-6811

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