



October 9, 2015

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Comment on DSTAC Report, MB Docket No. 15-64

Dear Ms. Dortch:

Please note that EFF attempted to file this letter on October 8, but encountered technical difficulties. We apologize for the late filing and ask that this letter be accepted into the record.

The Electronic Frontier Foundation (EFF) appreciates this opportunity to submit comments on the Downloadable Security Technical Advisory Committee (DSTAC) final report. EFF is a nonprofit, donor-supported public interest organization that champions user privacy, free expression, and innovation in the digital world. We work to ensure that rights and freedoms are enhanced and protected as our use of technology grows.

Nineteen years after its passage by Congress, it is time to fulfill the mandate of Section 629 of the Telecommunications Act, 47 U.S.C. § 549, to create real competition in customer equipment for receiving multichannel video. Over the past twenty years, the Internet has flourished as a communications medium due in large part to its use of open standards (officially established or informal). Anyone can build equipment and write software that uses all of the capabilities of protocols like TCP/IP. Internet standards that are unencumbered by patents, or by access controls regulated under Section 1201 of the Digital Millennium Copyright Act (the DMCA), reduce barriers to entry for new user hardware and software. This, in turn, leads to competition and an incentive to empower network users with the functionality and autonomy they demand.

Unlike IP-based technologies, other video transport technologies used by multichannel video providers (MVPDs) are effectively restricted by patents, trade secrets, and the DMCA such that only licensees of the MVPD can build end-user navigation devices, which are then typically leased by the MVPD to its customers. While the CableCARD standard, aided by the Commission's former "common reliance" rule, allowed several independent vendors such as TiVo and Hauppauge to manufacture and sell competing devices to TV-watchers, poor support from cable operators has created significant competitive disadvantages for these products and has discouraged new entrants. As a

815 Eddy Street • San Francisco, CA 94109 USA

voice +1 415 436 9333 *fax* +1 415 436 9993 *web* www.eff.org *email* information@eff.org

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result, MVPDs and their licensed equipment manufacturers have faced little competitive pressure to improve their end-user hardware, and have nearly complete control over the user experience. Leased set-top boxes often consume unnecessary electrical power, while monthly lease fees create an additional monopoly rent stream for MVPDs.

The competitive pressure driving innovation in set-top boxes today comes primarily from online video distributors (“OVDs” or “OTT”) operating over the Internet and relatively open hardware. Unfortunately, Internet traffic carried by cable, telco, and fiber MVPDs is generally confined to a fraction of the system bandwidth relative to linear and VOD content from the MVPDs.

The proposals of the DSTAC working groups have the potential to improve this situation, creating competition and lowering barriers to entry. To achieve the goals of Section 629, the Commission should avoid making mandatory any post-receipt usage controls on audiovisual content. This will allow new entrants to compete in the features they offer to the end user, rather than in the functionality withheld from the user at the request of rightsholders or intermediaries. The Commission should issue a Notice of Proposed Rulemaking in order to develop a record for appropriate, limited regulation to achieve Congress’s goal of competition and user empowerment in video navigation devices.

Very truly yours,

/s/ Mitchell L. Stoltz

Mitchell L Stoltz

Senior Staff Attorney

Electronic Frontier Foundation