



December 7, 2015

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

Re: *Downloadable Security Technical Advisory Committee Report*, MB Docket No. 15-64

Dear Ms. Dortch:

On October 20, the undersigned filed an *ex parte* communication setting forth and illustrating how widely used and understood standards-based technologies can enable competition in retail devices on MVPD systems, uniformly and without undue burden. The sources for this illustration came from the DSTAC recommendations on which the FCC has received public comment. On November 30, the NCTA filed an *ex parte* communication purporting to make similar claims for the “app” approach favored by most of the MVPD DSTAC participants. In this letter NCTA now admits that a competitive PVR device must be able to have its own user interface, via communication and control from the competitive device, through an MVPD component that does not present a UI. What the NCTA letter illustrates is:

- The competitive navigation approach described in DSTAC and exemplified on Oct. 20 is directed toward the correct competitive objectives, as established in the STELAR instruction to the FCC, and references the correct standards and technologies for achieving these objectives.
- The purported “app” solutions discussed in the NCTA letter are *not* in fact capable of delivering these competitive results on any basis useful to a subscriber. The fact that these “app” recording capabilities were at best theoretical was discussed in detail during DSTAC discussions.
- The only significance of the NCTA’s now-favored “AllVid” label is its utility as a *post-hoc* label for any suite of technology standards that might actually support device and guide competition. Any other meaning has long since been exhausted.

While still calling the established technologies and interfaces laid out in the October 20 illustration “vaporware,” the NCTA letter admits that under the App approach, to even *in theory* support recording through a competitive guide, it would be necessary to invent an entirely new interface. The letter presents a scenario in which a retail device “send[s] events” to an MVPD’s software, which causes the software to tune to the desired program. Today this “interface” can only be presented *to the consumer* as a graphic menu. Therefore the only way to tune is via manual entry by the user. It would not provide information *about* the MVPD programming sufficient to allow the device’s software to find and tune to that programming itself. A VidiPath client today displays content delivered to it via a Remote User Interface (RUI) mechanism --

depriving the retail device of *any* information about what is being displayed. So NCTA resorts to *vaporware* to describe “a retail VidiPath device” recording a program in three different ways: “the user could press a record button,”<sup>1</sup> “pick a program from a retail manufacturer's guide,” and “pick a program from a retail manufacturer’s app.”

This is a completely new idea and would require a completely new interface to be described in the NCTA-preferred “App Model.”<sup>2</sup> The MVPD software would need to supply metadata to the manufacturer’s software identifying what programming is available, enable the manufacturer’s software to tune to available programming, and supply various status information (success/failure, information about the current program, etc). There was significant discussion in DSTAC WG4 about the recordability of the DTCP-IP outputs of VidiPath and RVU, and there was agreement in WG4 that if one were to implement a retail device that did record the DTCP-IP output that it would end up with a horrible user experience, as there would be no scheduling of recordings, and no metadata associated with the recordings made (or, at most, time and date information).

In fact, the proponents of App Model in their analysis of the Competitive Navigation proposal (and rebutting criticism that the App Model using VidiPath and RVU does not support local recording) described recording under the App Model as supported (subject to content protection requirements), “[o]nce the user has navigated to the content of interest on the client device.”<sup>3</sup> Navigation is precisely the problem – a competitive device and a competitive UI must be able to navigate through content offerings, and NCTA now concedes that this is necessary, and requires a system where a competitive device can identify, select and play back content via a software program.

Now that the NCTA has admitted that subscriber recording through an independent guide on a competitive device should be supported, the Commission’s choice is whether to propose a solution that was discussed and debated in DSTAC, illustrated in a comprehensive filing that referenced known standards and was subject to public comment; or a theoretical improvisation

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<sup>1</sup> “[P]ress[ing] a record button” to record the current program is fundamentally deficient: the retail device would have no knowledge of what program or channel is being recorded, and it would be unable to label or store that recording in any meaningful or useful way. This is essentially reverting to recording onto unlabeled VHS tapes—a recording, yes, but the industry has made great strides in usability since the 1980s (and certainly a MVPD PVR recording would be labeled).

<sup>2</sup> For particular proprietary interfaces, such as RVU SHEF, some of this functionality may be available, but reliance on a proliferation of many proprietary interfaces would not assure availability of competitive navigation devices.

<sup>3</sup> DSTAC WG4 report at 156.

that even if implemented<sup>4</sup> would at best be a less useful, retrograde facility offered by those who, until pressed, have been fundamentally opposed to providing it.

Respectfully submitted,

/s/ John Bergmayer  
*Senior Staff Attorney*  
PUBLIC KNOWLEDGE

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<sup>4</sup> It was on the basis of NCTA's promise that CableLabs would field a standards-based downloadable system by 2008 that the FCC issued its March 17, 2005 Deferral Order, delaying the "integration ban" until June 1, 2007. Despite this explicit promise to the FCC, in return for which the Commission yet again delayed the integration ban to the detriment of competitive devices, CableLabs admitted in 2009 that it had abandoned its DCAS project. "TWC EVP of technology policy and product management Kevin Leddy lamented during a panel on the topic of tru2way at the Consumer Electronics Show that the 'economics of downloadable security are challenging' while CableCARD costs continue to slide downward." Jeff Baumgartner, *MSOs Closing PolyCipher Headquarters*, LIGHT READING CABLE, June 5, 2009, [http://www.lightreading.com/document.asp?doc\\_id=177662](http://www.lightreading.com/document.asp?doc_id=177662).