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Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, MB Docket 15-64

Dear Ms. Dortch:

According to recent filings¹ in the above-referenced permit-but-disclose proceeding, Google and other members of the “Consumer Video Choice Coalition” (CVCC) hosted at least two private technical demonstrations for FCC staff of its AllVid proposal *du jour*.²

In their *ex partes*, AllVid proponents claim to have demonstrated a “solution” that proves how the AllVid concept would work in practice, but have failed to provide any of the technical and operational details necessary that would allow for a meaningful assessment of what is being proffered to the Commission as a “solution.” For instance, the AllVid proponents fail to identify the actual devices used during the demonstration, the MVPD services demonstrated, or the equipment and standards they claim are “off the shelf.”

There is a reason that Commission rules do not permit *ex parte* presentations to hide new proposals and technical data from outside review. The requirement to provide “complete information about ... what arguments and showings are being made” is to ensure “that everyone

¹ Letter from Angie Kronenberg, Chief Advocate & General Counsel, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 15-64 (Dec. 14, 2015) (discussing demo hosted Dec. 10); Letter from Angie Kronenberg, Chief Advocate & General Counsel, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 15-64 (Dec. 15, 2015) (discussing Dec. 11 meeting); Letter from Karen Reidy, Vice President, Regulatory Affairs, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 15-64 (Dec. 16, 2015) (discussing demo hosted Dec. 14).

² The parties urging the Commission to mandate specific technical standards have changed their approach (and the names for their proposals) several times. We have used the term AllVid as a short-hand descriptor for all of these varied proposals, which share characteristics of the 2010 AllVid proposal that the Commission declined to pursue, such as compelling MVPDs to devote substantial economic and technical resources to build a new interface that would enable retail device manufacturers to obtain unbundled access to the piece parts of an MVPD’s service from which they could create their own service offering without regard for MVPD-content supplier agreements, copyright, licensing and other restrictions, and Title VI requirements.

(including the parties participating in our proceedings as well as the public monitoring them) understands the facts and arguments the Commission is considering.”³

The Commission should not permit such obfuscation in any proceeding, let alone a proceeding like this one where highly technical issues should be fully disclosed and subjected to full analysis *before* the Commission takes further action. There is a reason that the Commission designated this proceeding as a “permit-but-disclose” proceeding. It can and must ensure that the specifics of the private demonstration are made publicly available immediately and subject to third-party scrutiny. Requiring such specifics would be fully consistent with the openness the Chairman sought to achieve during the DSTAC process as well as the Commission’s *ex parte* requirements for transparency and fair play.

To address the practical meaning of the CVCC’s vague assertions in a timely and informed way, the Commission should direct CVCC to answer the following questions:

- *Is AllVid Just for Linear TV?* The AllVid proponents claim to have demonstrated reception of *linear* programming. But reception of linear TV is already available today from myriad apps from MVPDs, online video providers, and individual programmers.
 - Did the demonstration show how the “solution” supports reception of modern features of MVPD service with all integrated programming enhancements, apps and on-demand content?
 - Did the demonstration show how the “solution” supports the distinctive, branded, differentiated retail offerings of *each* MVPD?
 - Is the demonstration supporting a new AllVid proposal to dumb down MVPD service to unenhanced linear channels as they appeared more than a decade ago?⁴

³ *Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, 26 FCC Rcd 4517 at ¶¶ 17, 18, 21, 23, 32, and 33 (2011). The Commission specifically amended its *ex parte* rules to remedy a chronic problem: “in many cases *ex parte* notices contain little information about what was actually presented and discussed” and “deprives parties and the public of a fair opportunity to respond.”

⁴ Although the CVCC claims that it was demonstrating the device solution “described in” the DSTAC Working Group 4 Report, there are multiple reasons to doubt that assertion. First, after nine months of work, discussion, demonstrations and proposals reported out by DSTAC in late August, in October the AllVid proponents submitted a set of technical standards and specifications that were very different from their earlier proposal in the DSTAC Report. Both proposals have been roundly critiqued by content owners, manufacturers, technologists, and small and large multichannel service providers. Second, in DSTAC the AllVid proponents sketched a proposal to create dozens of new standards that could support the myriad interactive features of MVPD service, but in October they dropped support for those features. The CVCC *ex parte* discusses reception of *linear* programming, but not reception of the modern features of interactive services as offered by MVPDs.

- *Does AllVid Protect Licensing?* The AllVid proponents claim that the demo did not “alter MVPD linear content or advertising.”
 - Did the demonstration include technical standards and specifications that ensure respect for programming licenses and agreements that establish terms for payment, packaging, presentation, protection and use of content?
 - Did the demonstration include a demonstration of content protection and access to only those channels to which the customer has subscribed?
 - Did the demonstration bar tech companies from overlaying and selling advertising, or collecting and monetizing metadata arising from programming, whether or not acceptable to the programmer?
 - Do the AllVid proponents still contend that “*those sorts of restrictions that operators have agreed to may not make any sense in a retail place.*”⁵
- *Exactly Which Services Did the Demonstration Receive with No Box?* The AllVid proponents claim that no additional box is required to receive service from two MVPDs.
 - Which two MVPDs were the subjects of the demonstration?
 - Which MVPD services were demonstrated? Provide a list of programming processed.
 - What equipment and standards were used, end-to-end, in the demonstration?
 - Provide a block diagram of all hardware elements and how they were connected from the MVPD network to the display; a list of each protocol stack over each link (e.g. MPEG2 video / XYZ Encryption / MPEG2TS / HTTP / Ethernet); and a list of all software on each device (e.g. HD Home Run standard software or modified, key servers, encryption, decryption, guide app and associated features).
 - What “off-the-shelf” technologies were used in the demonstration?
 - How were those technologies the same or different from the AllVid proponents’ prior proposals?
 - Did the demonstration show that the solution would work with all cable, satellite and telco MVPD network architectures and services, or would the solution require changes in network architectures and services?

⁵ Transcript of March 24, 2015 DSTAC meeting at 38-39 (comment by representative for Public Knowledge) (emphasis added).

- *Did the Demonstration Really Show Emergency Alerts?* The AllVid proponents suggest that the demonstration proves the delivery of emergency alerts.
 - Did the demonstration use an actual emergency alert?
 - Did the demonstration use the wide variety of methods used to relay EAS messages in MVPD networks?
- *Did the Demonstration Assure Title VI Privacy and other Consumer Protections?*
 - Did the demonstration include technical tools that provide consumers with all of the statutory privacy and other consumer protections required by Title VI and built into cable apps?
 - Do the AllVid proponents still contend that these Title VI privacy and other consumer protections do not apply to retail boxes?

Given the AllVid proponents' hide-the-ball approach, we can only conclude that their proposal continues to suffer from the same host of problems that have always plagued it. AllVid would ignore the carefully negotiated licensing agreements that content providers and distributors agree to for channel placement, advertising, and in-home use.⁶ It would require MVPDs to provide a government-designed intermediary box in order to make any new retail device work. It would allow tech companies to track and store consumer TV watching habits without the protection of strong privacy laws. It would eliminate the ability for MVPDs to deliver the full features of modern MVPD service to retail devices. It would leave MVPDs and MVPD customers footing the bill for developing AllVid and would divert MVPD resources that are now being channeled into cloud-based platforms and apps that keep up with fierce video competition and benefit consumers. It would limit the freedom to compete to CE manufacturers, Google, Amazon and other online video providers, and deny it to MVPDs.

⁶ TiVo's representative told DSTAC that "operators have made agreements where there's not a disaggregation perhaps with the content owners, [but] that those should not necessarily apply to a third party device which should have the freedom to not be bound..." Transcript of March 24, 2015 DSTAC meeting at 96-97(emphasis added). Public Knowledge claims respect for copyright law, but it does not consider an AllVid retail device manufacturer to be a party to or be bound by the copyright licenses and distribution agreements under which content providers lawfully segment the market. The Public Knowledge representative told DSTAC "an operator might have agreed to channel numbers and channel line ups but ... a lot of those sorts of restrictions that operators have agreed to may not make any sense in a retail place." *Id.* at 38-39 (emphasis added). Another AllVid proponent dismissed video distribution agreements as irrelevant: "Device manufacturers, of course, cannot violate contracts to which they are not a party." Comments of Computer & Communications Industry Association at 10 (emphasis added). Amazon's representative dismissed a negotiated programming agreement enabling customers to view multiple screens of Olympic events simultaneously, saying "I'm perfectly happy as a DISH subscriber to have never viewed that. ...And if the device that I have is unable to do that, it's no skin off my back at all. In fact, I want a refund because I don't want to view that." Transcript of July 7, 2015 DSTAC meeting at 177 (Matt Chaboud for Amazon). AllVid proponents assert that they would be "answerable to the marketplace, not to network operators or programmers." Public Knowledge Comments at 15. According to AllVid proponents, they would not be required to honor the conditions of "rights holders or intermediaries." Electronic Frontier Foundation Comments at 2 (emphasis added).

Equally significant, the AllVid proponents continue to advocate for proposals that go far beyond the scope of Section 629 and the technical issues of downloadable security. Section 629 attempted to facilitate a competitive market in *equipment* that would allow consumers to watch the pay-TV service they had purchased. The AllVid advocates, however, are going far beyond that limited mandate and are instead proposing to create an entire new and distinct competitive video *service*, using content and intellectual property for which they did not negotiate or pay for the right to use.⁷ The FCC should continue to resist efforts to enlist the force of law to gain access to property that tech companies can freely negotiate for from content owners—just as many of the most popular streaming and alternative video services have done successfully.

This new demonstration by AllVid proponents was not presented to DSTAC despite months of discussion on these very topics nor was it presented or put out for comment in the subsequent Media Bureau Public Notice on the Final DSTAC Report. Before the Commission considers its next steps in this proceeding, it should subject this new information to analysis by experts and other parties to determine whether it is a real “solution” as its proponents claim or just another Potemkin village in a series of ever-changing proposals submitted by AllVid proponents.

Sincerely

/s/ **Neal M. Goldberg**

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⁷ As the Commission has previously ruled, Section 629 authorizes the FCC only to assure a market for retail devices that receive *MVPD services*, not to receive some selected parts or derivative service that a CE manufacturer may wish its product to provide. *Gemstar Int’l Group, Ltd.*, 16 FCC Rcd 21531, 21542, ¶ 31 (2001)