



December 18, 2015

Via Electronic Filing

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

Re: Media Bureau Request for Comment on DSTAC Report, MB Dkt. No. 15-64

Dear Ms. Dortch:

The Consumer Video Choice Coalition¹ (the “Coalition”) responds to the last ditch attempts by the National Cable & Telecommunications Association (NCTA)² to find some fault with the competitive navigation solution in the DSTAC Report’s Recommendations. The Coalition also comments on a filing by DISH and EchoStar,³ which in looking forward to a rulemaking notice, raises prospective policy issues for the Commission to consider in the course of that proceeding.

The Coalition disagrees with NCTA’s claims that if an MVPD wishes to support the competitive navigation solution there are technical obstacles to doing so, and that in such case an additional “box” would be necessary. The Coalition disagrees with the policy-based reservations posed by the aforementioned parties but agrees that it is appropriate for the FCC to harmonize its policies in a rulemaking, to best implement Congress’s directive in Section 629 to assure a standards-based competitive market for retail products and independent innovation.

NCTA attacks the competitive navigation device solution by calling it “AllVid” as a pejorative.⁴ NCTA suggests⁵ that because some (but not all) “AllVid” proposals had assumed

¹ The Coalition is comprised of Ceton Corp., Common Cause, Computer & Communications Industry Association, Consumer Action, Google Inc., Hauppauge, INCOMPAS, New America’s Open Technology Institute, Public Knowledge, Silicondust USA, Inc., VIZIO, and Writers Guild of America, West.

² NCTA ex parte letters, Dec. 14 and 16, 2015.

³ DISH – EchoStar ex parte letter, Dec. 15, 2015.

⁴ See Reply Comments of NCTA, MB Docket 15-64, *passim* (filed Nov. 9, 2015) (using the term “AllVid” 153 times); Comments of NCTA, MB Docket 15-64, *passim* (filed Oct. 8, 2015) (using

the presence of a uniform “gateway” device, any proposal based on DSTAC competitive navigation recommendations also would always require a “gateway” device. Public Knowledge, in its December 3 ex parte letter, explained that this is not the case.⁶ Some MVPDs can support the competitive navigation device solution today by providing the virtual head end interface from the cloud. All can do so by relying on facilities in a DOCSIS modem or other home network device such as a satellite receiver. No separate device is necessary unless the operator prefers to provide one.

NCTA’s December 14 letter apparently acknowledges the technical validity of a gateway implementation, but searches for a reason why the competitive navigation device solution would not work directly from “the cloud.” The fact is that a cloud implementation *will* work unless the MVPD is determined to *deny* to its subscribers the benefits of this implementation. NCTA first objects that “no MVPD can put every subscriber and every home in an MVPD’s system onto the same UPnP network. This limitation of UPnP is one reason why no PCs or mobile browsers support UPnP.”⁷ Even if true (and it isn’t⁸), this is scarcely relevant and hasn’t hampered MVPD plans to rely on UPnP themselves. UPnP is a core part of VidiPath and RVU, which as the DSTAC report noted, are and will be widely deployed by cable operators.⁹ UPnP is deployed “throughout the cable system[,]” and cable “has a long relationship with UPnP Forum.”¹⁰ CableLabs has worked to extend UPnP from just the home network to the cloud to address the very issues NCTA now claims to be obstacles.¹¹ In the short term, many cable and telco MVPDs

the term “AllVid” 152 times).

⁵ NCTA ex parte letters, Dec. 3, 14, and 16, 2015; NCTA Request for Extension of Reply Comment Deadline to Address Newly-Filed Proposal, MB Docket 15-64 (filed Oct. 27, 2015), *denied*, FED. COMM’NS COMM’N, Order, MB Docket 15-64 (Nov. 4, 2015).

⁶ Public Knowledge Dec. 3 ex parte letter at 1.

⁷ NCTA Dec. 14 ex parte letter at 1-2.

⁸ Every modern Windows operating system supports UPnP.

⁹ “Many of the major MVPDs either support DLNA VidiPath today or plan to in the near future. ABI is projecting that VidiPath Certified devices will be available in approximately 40 percent of all U.S. cable households that subscribe to advanced services by 2016, and 70 percent by 2020.” DSTAC Final Report at 127.

¹⁰ “DLNA VidiPath technology (which is based on UPnP specifications) has been deployed by cable companies as a way to provide secure video streams over IP networks to certified video devices. UPnP technology is deployed throughout the cable system.” Clarke Stevens, *UPnP, OIC, and Cable*, CABLELABS, <http://www.cablelabs.com/upnp-oic-and-cable/> (last visited Dec. 17, 2015).

¹¹ A lack of support would thus be a *business choice* by the MVPD rather than a technical obstacle. Such would not be the first time that cable’s lack of support for a competitive navigation technology would arise from a self-fulfilling prophecy. *See* FED. COMM’NS COMM’N,

may choose to support the competitive navigation device solution by either enabling existing set-top boxes as virtual head-ends or by offering *as an alternative* cheaper, smaller, and more power efficient virtual head-end devices, allowing the subscriber to enjoy programming on existing devices such as smart TVs, tablets, game consoles, and streaming devices.¹² To summarize, a cloud implementation could *eliminate* the need for a box. A “gateway” implementation could replace a complex box with a simpler one. The competitive navigation device solution would *not need* to “add” a box.

NCTA then turns on DTCP-IP, pointing out that as *originally implemented* as a link between devices on a home or personal network, it “caps the number of connected devices at 34, uses a key domain that extends over a home network and not the entire distribution network, and limits content to the home by using localization metrics”¹³ These are not limitations of DTCP-IP technology, which can protect content transmitted over *any* network. Rather, they are additional security elements applied in the DTCP license for home and personal use, which make sense *in the context* of using DTCP-IP to restrict content transmissions to a personal network. In the context of cloud origination, an MVPD can replace home network localization methods with one of many available techniques that prevent potential out-of-network distribution, without any restriction on the number of supported devices.

NCTA relies on such baseless assertions to claim that supporting competitive navigation devices would “require massive changes in the MVPD’s network architecture” through the alleged need to create a “second headend” for “duplicate video traffic.”¹⁴ Again, NCTA ignores the flexibility and choices inherent in the DSTAC’s competitive recommendations, as well as DSTAC’s reliance on familiar standards and specifications. A virtual headend can be added to an in-home device such as a DOCSIS modem or a satellite receiver. Furthermore, such support is likely to be available as operators continue their long-planned transition to IP transmission. Indeed, many MVPDs are already transitioning to IP and making such changes.¹⁵

Connecting America: The National Broadband Plan § 4.2 at 52 (discussing problems with CableCARD support and installation).

¹² This is illustrated by the attached animation reference (converted to .PDF format), which was displayed in the technical demonstration referred to in an INCOMPAS ex parte letter of December 17, 2015.

¹³ NCTA ex parte letter, Dec. 14, 2015 at 2.

¹⁴ *Id.*

¹⁵ “MVPDs are in the process of migrating to (or simultaneously enabling) IP transmission of content, through either direct Cloud to Ground delivery or an interim gateway solution that converts to IP in the home.” DSTAC Final Report at 107.

The Coalition urges the Commission to move forward expeditiously with a rulemaking proceeding to implement the competitive navigation device solution.¹⁶ The solution will provide consumers with the option to purchase their own chosen navigation devices at retail at costs lower than the current typical annual rental price charged by MVPDs, which averages almost \$232 for every subscriber household.¹⁷ Moreover, consumers would have flexibility to choose user interfaces that best suit their needs and be able to more easily access the over-the-top content of their choice without having to switch between devices. As a result, consumers would have a better viewing experience, and independent programmers that have been unable to gain access to MVPD platforms would have an opportunity to gain viewership by offering programming directly to consumers as an over-the-top product on equal footing with traditional cable programming.¹⁸

As the Coalition recently demonstrated,¹⁹ the competitive navigation device solution is technically capable of offering consumers linear content from their MVPD of choice, along with their over-the-top content of choice, in a seamless manner with third-party navigation devices. The Coalition also showed that the competitive navigation device solution does not alter MVPD linear content or advertising. Furthermore, the competitive navigation device solution allows consumers to access fully the programming offerings to which they subscribe from their MVPD. Channel placement is unchanged. Emergency alerts function properly so that public safety

¹⁶ See generally Final Report, Report of Working Group 4 to DSTAC at 180-194 (Aug. 28, 2015) (“WG4 Report”), available at <https://transition.fcc.gov/dstac/wg4-final-report.docx> (detailing the competitive navigation device solution proposal).

¹⁷ Press Release, Office of Sen. Ed Markey, Markey, Blumenthal Decry Lack of Choice, Competition in Pay-TV Video Box Marketplace (July 30, 2015), available at <http://www.markey.senate.gov/news/press-releases/markey-blumenthal-decry-lack-of-choice-competition-in-pay-tv-video-box-marketplace>.

¹⁸ As long as large incumbent MVPDs control the development and distribution of navigation devices, they have the incentive and ability to deter consumers from accessing independent content that competes with MVPD service offerings over set-top boxes and televisions. However, with a robust, competitive marketplace for video navigation devices where consumers can easily purchase and install devices, manufacturers would be able to produce devices that can access over-the-top services, apps, and content alongside content received as part of an MVPD subscription. History shows that when consumers have options for consumer electronics that they can attach to the networks they use, innovation and investment flourishes, and consumers greatly benefit.

¹⁹ See Consumer Video Choice Coalition ex parte letter, Dec. 14, 2015 (detailing a technical demonstration of the competitive navigation device solution performed by members of the CVCC before FCC staff).

messages are received by viewers. Likewise, closed-captioning is timely and fully relayed, and customizable parental controls are made available.

In its December 16 letter, NCTA concedes that third-party device manufacturers are not privy to, and therefore are not bound by, private contracts negotiated between programmers and MVPDs. Indeed, it would be absurd to suggest that MVPDs solely could restrict the capabilities of competitive devices or override consumer fair use, or that private MVPD contracts could limit the FCC's authority to implement Section 629. Indeed, MVPDs themselves have complained to the FCC about outrageous, unfair, and discriminatory programming agreement provisions.²⁰ As NCTA acknowledges, "there is debate about what is or is not allowed under the DFAST license."²¹ But, the Commission's rules implementing Section 629 are not ambiguous. MVPDs only may impede a subscriber's right to operate a competitive device where it may cause *electronic or physical harm* to the MVPD service, or would assist in *unauthorized receipt of service*.²² To the extent NCTA or DISH and EchoStar believe FCC rules should be interpreted or amended to address additional concerns, they may express such views in the course of a rulemaking proceeding.²³

²⁰ Shalini Ramachandran, *AMC Takes Aim at Skinny Bundles in Cable Carriage Fight*, WALL ST. JOURNAL (Dec. 15, 2015) at <http://www.wsj.com/articles/amc-takes-aim-at-skinny-bundles-in-cable-carriage-fight-1450215665>; ACA ex parte letter in Docket No. 15-158 at 3 (Dec. 15, 2015) (complaining that AMC's "outrageous demands serve to limit the ability of NCTC members, whom all complete against larger MVPDs, to offer a competitive service to consumers in the market.").

²¹ NCTA Dec. 16 ex parte letter at 2.

²² 47 C.F.R. § 76.1201 states "**Rights of subscribers to use or attach navigation devices.** No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where *electronic or physical harm* would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the *unauthorized receipt of service*." (emphasis supplied) Section 76.1202 provides: "No multichannel video programming distributor *shall by contract, agreement, patent right, intellectual property right or otherwise* prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with such owner or operator, subject to § 76.1209." (emphasis supplied)

²³ For example, if a consumer has a support issue, she calls the manufacturer or retailer that sold her the device. If a Sling box, a television, or other third party device has bugs that render the MVPD's service unusable, the consumer will call the third party manufacturer to repair or replace it. If the third party device becomes technically obsolete, the consumer will purchase a new device. Consumers recognize that products have lifecycles. Of course, a consumer also would continue to have the choice to lease a device from her MVPD.

Marlene H. Dortch
December 18, 2015
Page 6

Consumers are demanding lower cost video options and the freedom to access new streaming over-the-top content, and the Coalition has proven that competition holds the technology solution for ending the era of forced set-top box leasing from large incumbent MVPDs. The Commission finally has within its grasp the ability to truly implement Section 629 as intended so that consumers have competitive options for navigation devices. The Commission should seize this moment, and propose the competitive navigation device solution in a rulemaking proceeding.

Respectfully submitted,

/s/ Consumer Video Choice Coalition

cc:

Steven Broeckaert
Michelle Carey
Chris Clark
Hillary DeNigro
Lyle Elder
Eric Feigenbaum
Stacy Fuller
Scott Jordan
William Lake
Mary Beth Murphy
Nancy Murphy
Brendan Murray
Susan Singer
Gigi Sohn
Antonio Sweet
David Waterman
Alex Starr

Cable Household

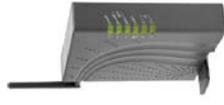
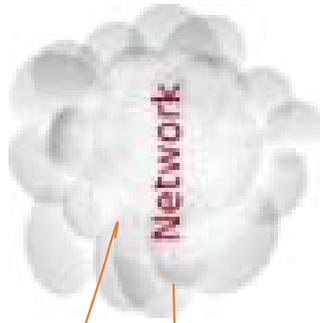
Today



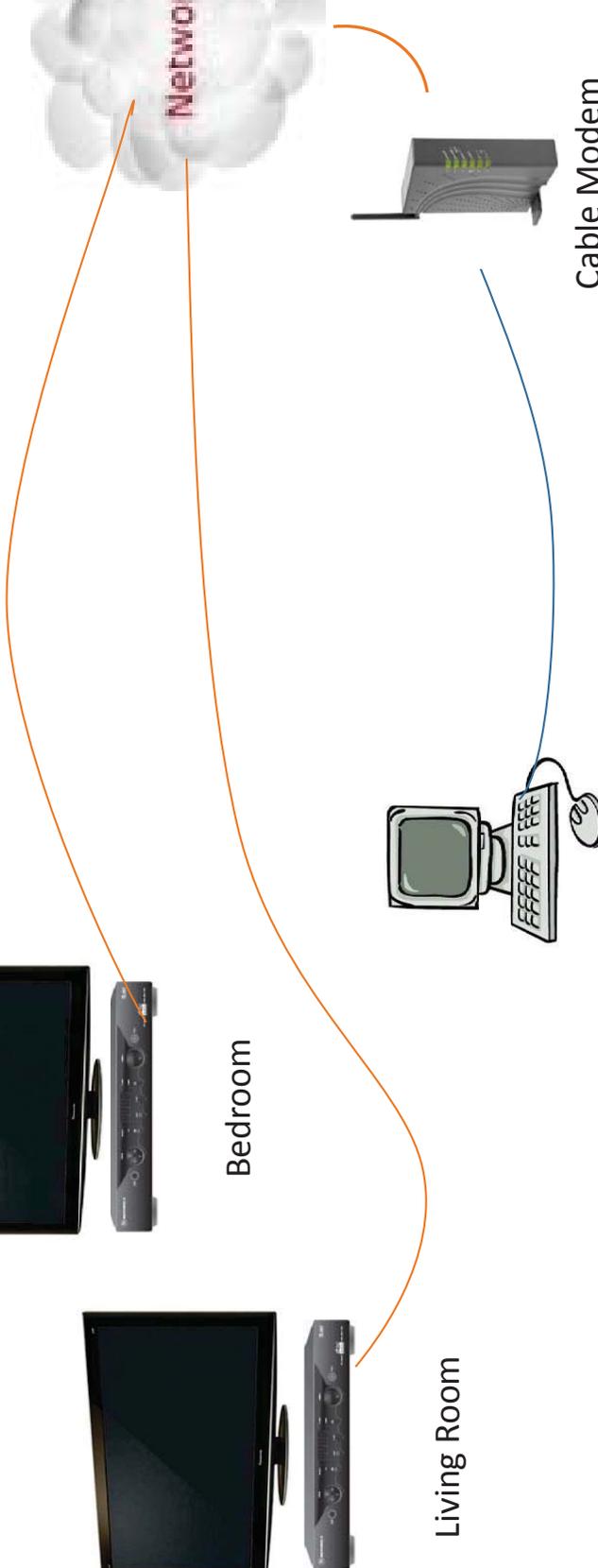
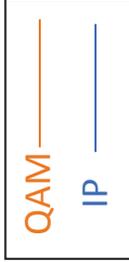
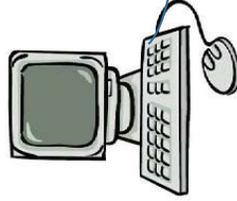
Bedroom



Living Room

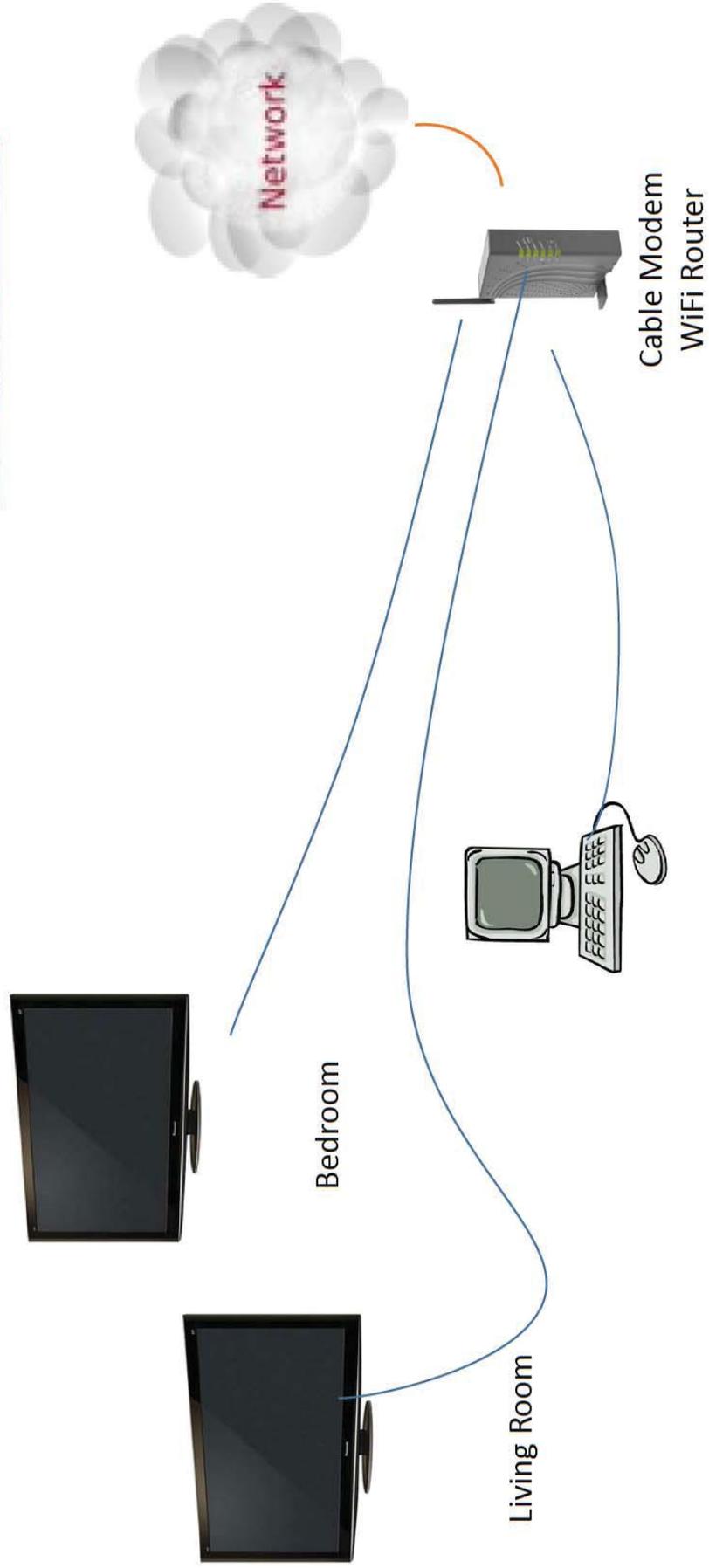


Cable Modem
WiFi Router



Cable Household

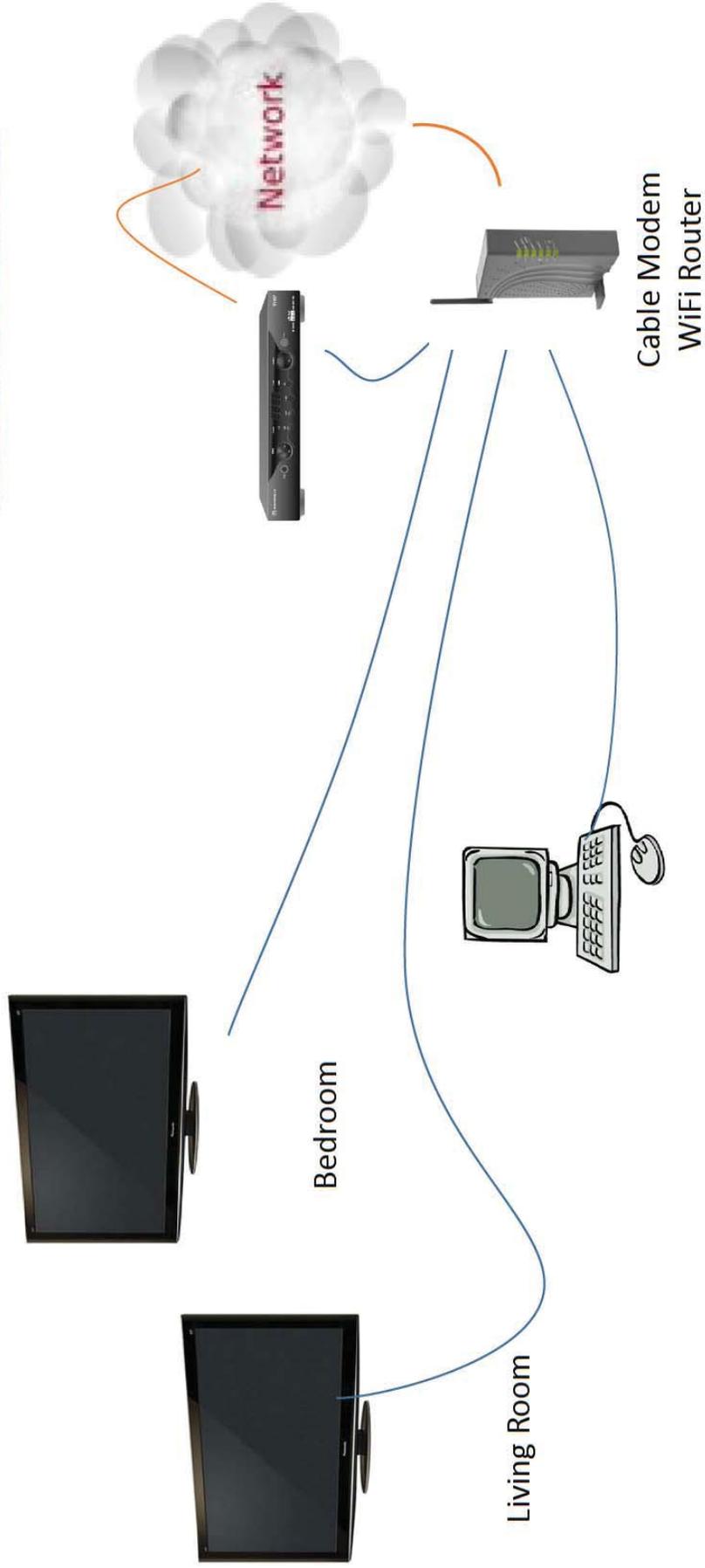
Competitive Navigation



QAM	—
IP	—

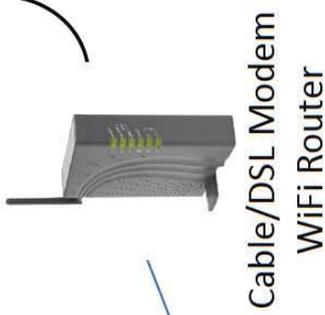
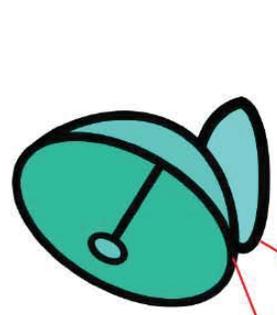
Cable Household (Option)

**Competitive
Navigation**



Satellite Household

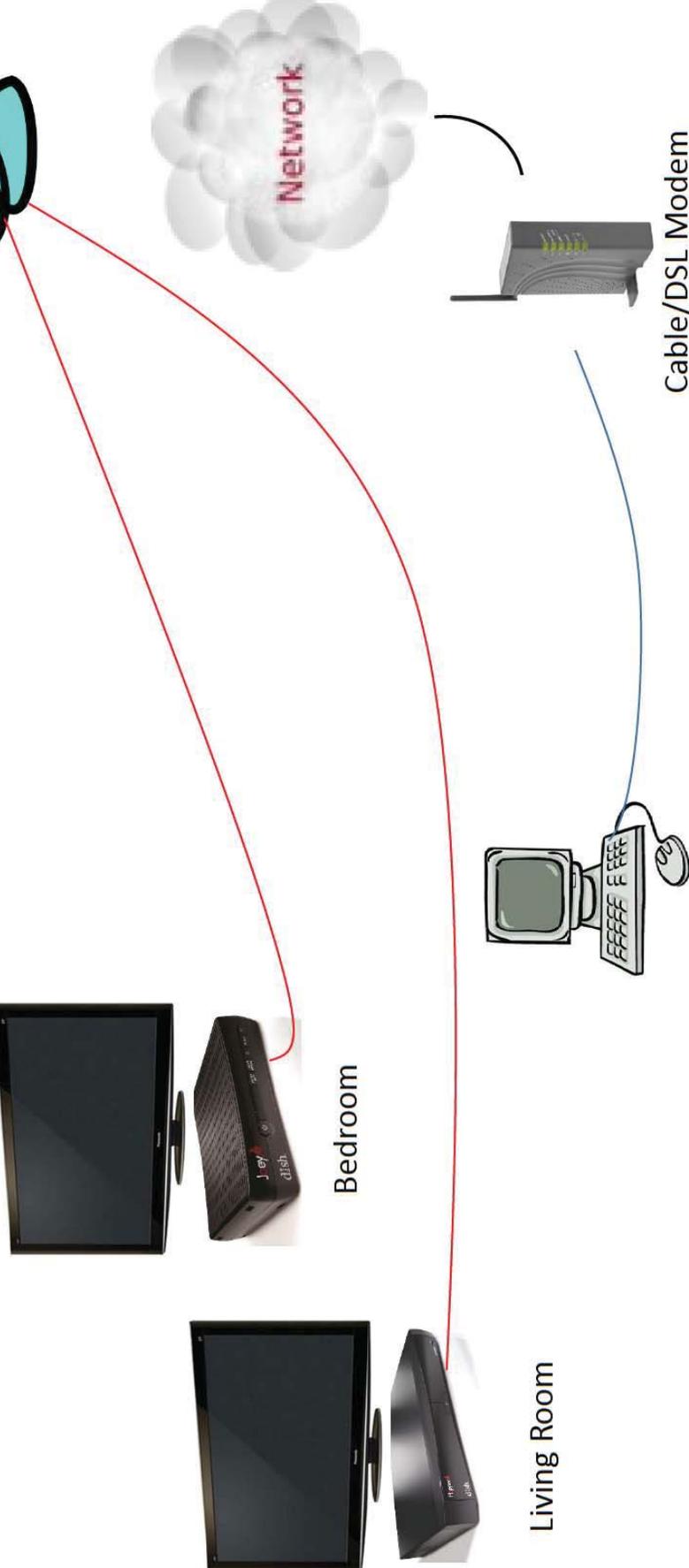
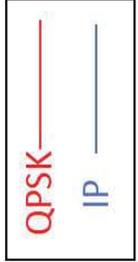
Today



Bedroom

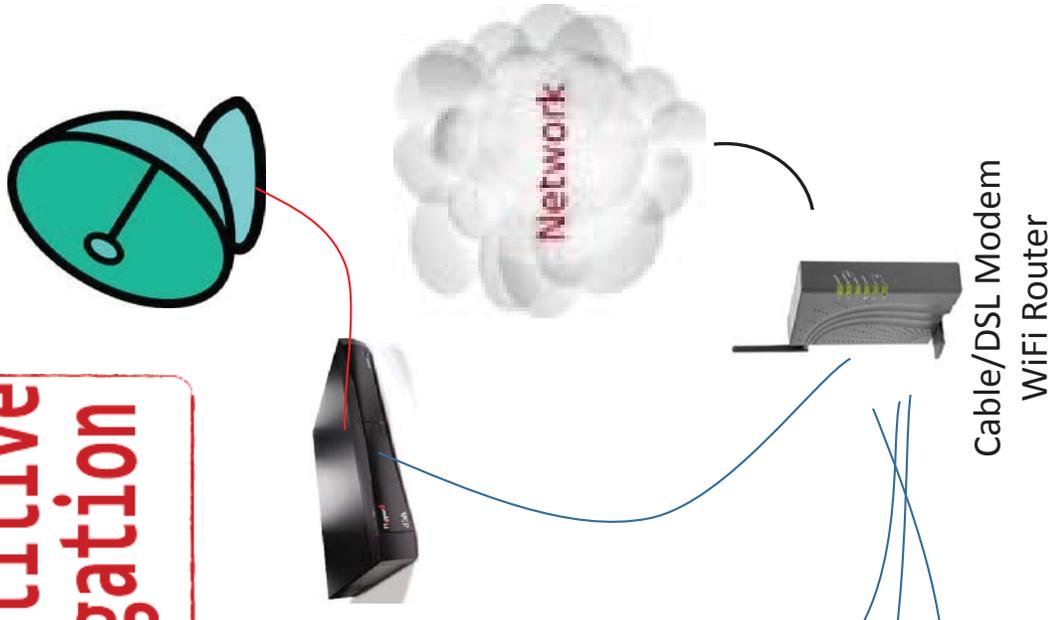


Living Room

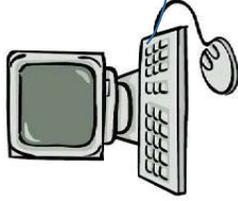


Satellite Household

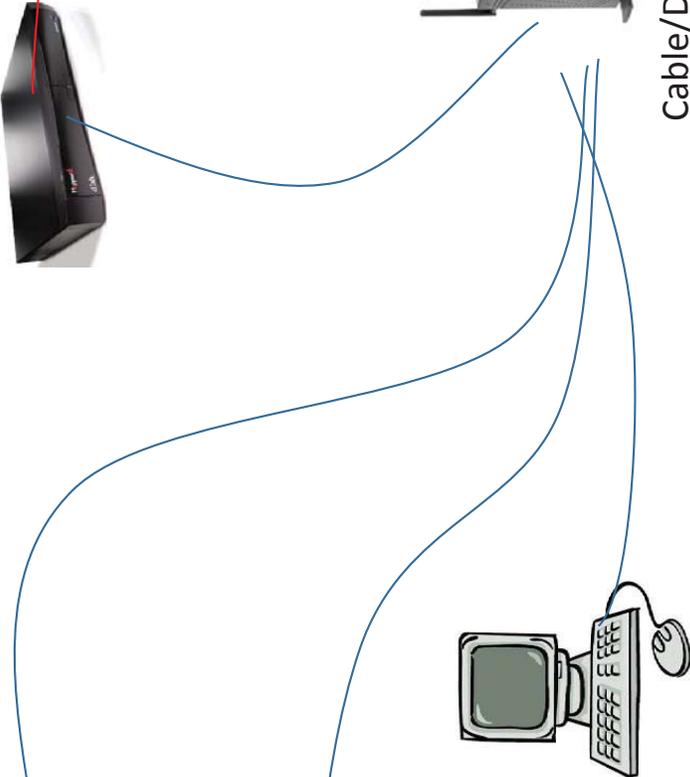
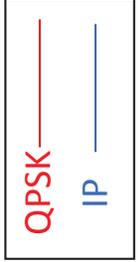
Competitive Navigation



Bedroom



Living Room



IPTV Household

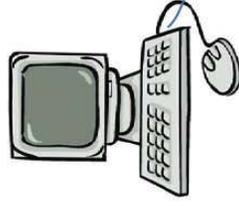
Today



Bedroom



Living Room



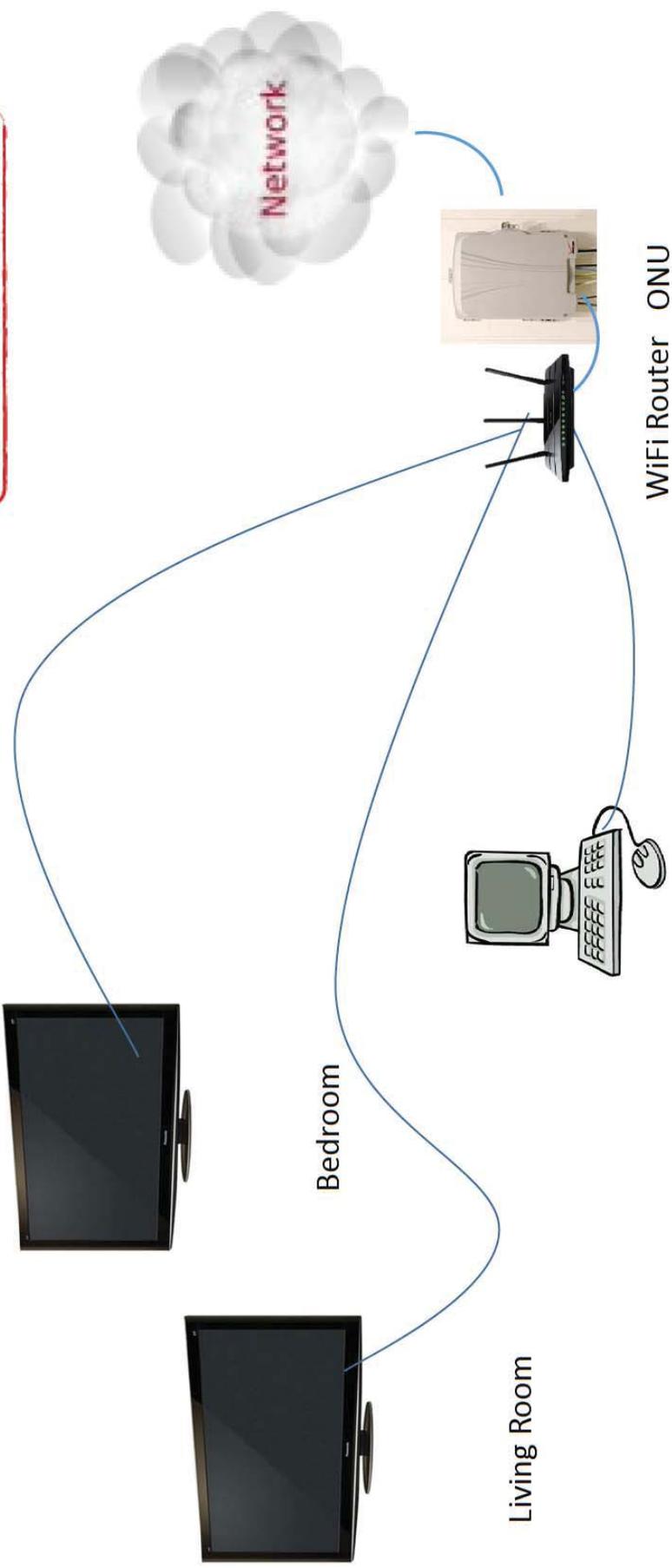
WiFi Router ONU



IP ———

IPTV Household

**Competitive
Navigation**



IP —