



December 22, 2015

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., 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 (CVCC) responds to the National Cable & Telecommunications Association's (NCTA) ex parte letter of December 18, 2015, in which NCTA asks the Commission to seek further information about CVCC's competitive navigation device solution, and presents specific questions NCTA would like answered on the record.²

There is a mechanism by which the Commission can present technical and policy questions to interested members of the public and receive responses for the record. That mechanism, of course, is the rulemaking process outlined in the Administrative Procedure Act (APA).³ Indeed, the difference between CVCC and NCTA has come down to CVCC's urging the Commission to follow the notice and comment process directed by the APA, while NCTA urges an *ad hoc* agency inquiry limited to its own questions, that is untethered from the rules of administrative procedure.

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, Siliconust USA, Inc., VIZIO, and Writers Guild of America, West.

² Letter from NCTA to Marlene H. Dortch, Secretary, FCC in MB Dkt. No. 15-64, at 1-2 (filed Dec. 18, 2015).

³ See 5 U.S.C. § 553 (setting forth the notice-and-comment rulemaking process required of agencies).

NCTA's allegations regarding CVCC's recent ex parte submissions are unfounded and ironic, particularly given NCTA's own history of holding demonstrations only for Commission staff. For instance, as disclosed in an ex parte letter, on July 15, 2005, "representatives of cable operators and cable technology suppliers and the cable industry's trade association" met with representatives of the Media Bureau (Bureau) and the Office of Engineering and Technology (OET) "to demonstrate the progress that has been made ... in developing downloadable conditional access systems."⁴ The companies present were said to have:

[A]ll successfully demonstrated their ability to download their respective conditional access systems over a cable system to set-top boxes which had no embedded security, each using its own differentiated headend equipment, and, separately, to download entitlement management messages that enable the customer to access individually-authorized levels of service. Additional work is in progress to enable conditional access systems to be downloaded to a variety of set-top boxes and to consumer electronics products in this manner.⁵

No further technical information was supplied.

On November 29, 2005, cable industry representatives and a potential manufacturer met with the Bureau and OET. According to an ex parte letter dated November 30, 2005:⁶

In the previous demonstration, three companies, each using its own differentiated headend equipment, successfully demonstrated their ability to download their respective conditional access systems over a cable system to set-top boxes that had no embedded security and to download entitlement management messages that enable customers to access individually-authorized levels of service. The July 18 report also stated that additional work was in progress to enable conditional access systems to be downloaded to a variety of set-top boxes and to consumer electronics products. *** The demonstration on November 29 highlighted successes resulting from that endeavor.⁷

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Letter from James L. Casserly on behalf of Comcast Corp. to Marlene H. Dortch, FCC (July 18, 2005).

⁵ *Id.*

⁶ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Letter from James L. Casserly on behalf of Comcast Corp. to Marlene H. Dortch, FCC (Nov. 30, 2005).

⁷ The NCTA / CableLabs DCAS project was subsequently abandoned on the purported basis that CableCARD solutions were proving less expensive than the techniques licensed by CableLabs and demonstrated to the FCC. *See* Letter from Public Knowledge to Marlene H. Dortch, Secretary, FCC in MB Dkt. No. 15-64, at 3 n.4 (filed Dec. 7, 2015).

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The CVCC renews its call for the Commission to move forward expeditiously with a transparent, notice-and-comment rulemaking to investigate and implement the competitive navigation device solution. Consumers are demanding lower-cost video options and greater freedom to access streaming content. The CVCC has demonstrated a competitive, technology-focused solution for ending the era of forced set-top box leasing from large incumbent MVPDs. Thus, the Commission has before it a unique opportunity to implement Section 629 and provide consumers genuine 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

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