Davis Wright Tremaine LLP

Suite 800
1919 Pennsylvania Ave. NW
Washington, D.C. 20006-3401

Paul Glist
202-973-4220
202-973-4475 fax
paulglist@dwt.com

January 13, 2016

VIA ECFS

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

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

Dear Ms. Dortch:

On January 11, 2016, at the request of the Media Bureau, the following individuals met with Commission staff: Rick Chessen, and Paul Hudson (counsel) for the National Cable & Telecommunications Association (NCTA); Mark Hess, Mark Vickers, Jordan Goldstein, and Jonathan Friedman (counsel) for Comcast; Jay Rolls* and Alex Hoehn-Saric for Charter; Jennifer Prime for Cox; Emmett O'Keefe for Cablevision; Ralph Brown for CableLabs; and Neil Fried and Andrea Avila for the Motion Picture Association of America (MPAA). The Commission staff present at the meeting were Scott Jordan, Chief Technologist; Gigi Sohn, Louisa Terrell, and Jessica Almond of the Chairman's office; William Lake, Michelle Carey, Nancy Murphy, Mary Beth Murphy, Brendan Murray, Lyle Elder and Martha Heller of the Media Bureau; Antonio Sweet of the Office of Strategic Planning; and Susan Aaron and Matthew Collins of the Office of the General Counsel. We discussed the following aspects of proposals for an "AllVid"[1] government technology mandate.

In all its variations, AllVid would impose serious harm on the entire video ecosystem, stifle innovation and impede the rapidly growing expansion of the apps that currently support the delivery of multichannel service on more retail devices than there are MVPD set-top boxes. AllVid would ignore such license requirements as how to present services, what ads are acceptable, what can and cannot be overlaid near that licensed content, and whether content is for in-home or out-of-home use. By relying on in-home technologies, it would require a second box in the home to serve retail devices that are reached today by cloud-based apps requiring no set-top box at all. And even if designed around a new box in the home, AllVid would fail to

[1] 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, as well as Title VI requirements.

* indicates participation by telephone

support the interactive features and tools that provide customers with the essential elements of modern cable service and tools for customer support. It would impose static protocols in lieu of today's apps that offer consumers, MVPDs and other video providers the ability to update service quickly with a click. It would make customer support more difficult and expensive as manufacturers present only parts of MVPD service in different ways, raising problems even larger than those previously catalogued with retail CableCARD devices.[2]

These problems cannot be remedied with technical tweaks to the AllVid proposal, new FCC regulations that attempt to replicate the complex system of negotiated licenses and rights, or by adding DRMs that device manufacturers could decode to create their own alternative service. From the early days of middleware to today's flourishing world of interactive platforms in iOS, Android, PCs, MACs, Smart TVs, gaming stations, Roku, HTML5 and VidiPath, apps have been embraced by platform developers, CE device manufacturers, content publishers, online and MVPD service providers, and consumers. Apps-based Rokus, available today without the need for regulation, have already outsold TiVo ten to one. Further endorsement of this approach was evident at the 2016 Consumer Electronics Show, at which the Consumer Technology Association (formerly CEA), device manufacturers, distributors, content providers and security companies from across the video ecosystem launched the Global Internet Video Ecosystem (GIVE). GIVE is using HTML5 with streaming media standards to assure "a playback environment that is consistent, reliable, and high performance, on TVs, phones, tablets, media players, gaming systems, laptops"[3] – just as proposed in the apps-based approach reported in DSTAC. The technology and ecosystem are built on apps offered by online and MVPD service providers and content publishers in order to deliver and protect today's far more complex interactive video services.

AllVid, inflexible protocols, and regulated entitlements would undermine this diverse, nimble, apps-based ecosystem that has produced the most competition and innovation, and the richest array of video choices, that consumers have ever enjoyed. AllVid would not supplement apps to give consumers even more choices – instead it threatens to supplant the full and timely realization of the video app revolution in the United States.

- AllVid would create the widest single point of attack and weakest link for all security for all MVPD networks and content. By contrast, the MovieLabs Specification for Enhanced Content Protection describes a set of multiple

---

[2] Letter from Neal Goldberg, NCTA to Marlene H. Dortch, Secretary, FCC, CS Docket 97-80 (Jun. 29, 2006) *available at* http://apps.fcc.gov/ecfs/document/view?id=6518382202

[3] Troy Dreir, *CES '16: The GIVE Project Aims to Push HTML5 Video Forward*, Streaming Media (Jan. 7, 2016), http://www.streamingmedia.com/Articles/Editorial/Featured-Articles/CES-16-The-GIVE-Project-Aims-to-Push-HTML5-Video-Forward-108444.aspx (GIVE is spearheaded by the CTA. The steering committee includes Adobe, Akamai, LG, Samsung, Sky-UK, Sony, Starz, and WWE. The panel announcing GIVE included representatives of Adobe, Akamai, Comcast, Sony, Microsoft, MLB Advanced Media, Samsung, and Starz.)

specifications, which improves security in a developing environment.[4] This specification reflects recognition that when technologies are evolving and advancing at a rapid pace, so should the technologies that protect and secure the networks and content.

- AllVid does not support multicast or common encryption, so MVPDs would have to dedicate precious network bandwidth to support delivery of cable service to AllVid devices, in lieu of using that bandwidth for 4K, high-dynamic-range (HDR) color, faster broadband, and other services.

- The video programing marketplace would be fundamentally compromised if the Commission created a special license for tech companies to take content without license or responsibilities, and to evade the advertisement and audience measurement requirements that underwrite multichannel service.

- Consumers would lose privacy protections under Title VI privacy laws as AllVid would allow tech companies to collect and monetize consumers' personal viewing data.

- By pursuing a "one-size fits all" protocol-based solution to impose on very diverse networks and negotiated content agreements, AllVid would displace the competition that has produced a wide variety of and continuous innovation in content distribution paths and business arrangements, and in technologies for video-on-demand, guide data, IP multicast, transport protocols, container formats, content formats, and content protection systems. AllVid protocols could not keep pace with the rapid rate of changes in technology, security, business models and rights in the market. If the Commission had adopted the AllVid proposal in 2010, the explosion in consumer use of tablets, smartphones, game consoles and other retail devices to access MVPD programming could not have happened. AllVid today would likewise interpose Commission rules as a barrier to innovation and change, and leave MVPDs as the sole video provider needing permission to innovate.

- AllVid is by no means off-the shelf technology. It would require new invention and changes in network architecture, diverting MVPD resources and investment from creating apps for more platforms, from expanding cloud-based services that could reduce consumers' need for set-top boxes, and from meeting ever evolving consumer demand.

- All MVPD customers would pay for the costs of implementing AllVid, whether or not they want AllVid. Nor would the costs be regained through supposed

[4] Motion Picture Laboratories, Inc., MovieLabs Specification for Enhanced Content Protection – Version 1.1 (Feb. 2015), *available at* http://www.movielabs.com/ngvideo/MovieLabs%20Specification%20for%20Enhanced%20Content %20Protection%20v1.1.pdf.

> benefits from regulated solutions. In defending the integration ban in 2005, the Commission said that "We do not take lightly the imposition of additional costs on consumers" but "it seems likely that the potential savings to consumers from greater choice among navigation devices will offset some of the costs."[5] That technology mandate failed famously and expensively for nearly a decade before it was repealed by Congress. AllVid would be another needless technology mandate that is obsolete by the time it is developed.

Section 629 was adopted to advance the availability of MVPD service *"offered"* and *"provided" by MVPDs* on retail screens. The AllVid proponents seek a compelled, blanket content license to exploit the programming of others for their own commercial purposes. Section 629 is not directed at changing copyright and intellectual property law in programming, guide data, or technology. AllVid would exceed the Commission's authority under the Communications Act and would violate the First Amendment and copyright law.

Not only is AllVid unlawful, it is unnecessary. Apps already make MVPD service available to retail, and enjoy widespread support from consumers, CE manufacturers and industry leaders around the world – while preserving and promoting independent innovation in networks, services, and devices. Audiences can already lawfully access programming from well over 100 services, online and off, and over almost every imaginable consumer electronics, mobile, or other navigation device. Adopting this proposal would not make any content available to consumers that they do not already have access to. Instead, it would undermine the entire video ecosystem, and even remove the incentives that have led online providers like Amazon and Netflix to create their own popular programming.

The Commission should decline to initiate a rulemaking and should continue on the path it chose in 2010 to allow the market to deliver new retail options to consumers.

Respectfully submitted,

/s/ Paul Glist

Paul Glist

cc: Scott Jordan
Gigi Sohn
Louisa Terrell
Jessica Almond
William Lake
Michelle Carey

[5] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, FCC 05-76, Second Report and Order, CS Docket No. 97-80, 20 FCC Rcd 6794 ¶ 29 (2005).

Nancy Murphy
Mary Beth Murphy
Brendan Murray
Lyle Elder
Martha Heller
Antonio Sweet
Susan Aaron
Matthew Collins
Rick Chessen
Mark Hess
Mark Vickers
Jordan Goldstein
Jonathan Friedman
Jay Rolls
Alex Hoehn-Saric
Jennifer Prime
Emmett O'Keefe
Ralph Brown
Neil Fried
Andrea Avila
Paul Hudson