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VIA EMAIL

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:

In its December 18, 2015 *ex parte* submission, the “Consumer Video Choice Coalition” (CVCC) makes three arguments. First, it claims that MVPDs could implement its proposal for AllVid¹ from the cloud, rather than requiring another government-mandated box in the home. As we explain below, the technical foundation for the AllVid proposal² depends on distribution from a new in-home box, not from the cloud—a point that CVCC now partially and grudgingly admits but does not correct.

Second, CVCC suggests that AllVid would not alter MVPD service. Whatever Google and other AllVid proponents chose to demo – and their *ex parte* supplement of December 23 still hides the details – the rule they seek would permit tech companies to ignore licensing and distribution agreements; to rearrange, exile, or drop channels; to overlay ads; to drop the apps and interactive elements that are integral parts of MVPD service; and to create a new service without license or compensation to content owners.

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, and Title VI requirements.

² Contrary to CVCC’s claim, the DSTAC Report did not report an AllVid “Recommendation,” under any name. It presented only competing proposals. As summarized by DSTAC, “The Working Group 4 Report presents two *proposals* for handling non-security elements, as well as critiques of each approach by members of DSTAC.” DSTAC Summary Report, Attached to Public Notice, *Media Bureau Seeks Comment on DSTAC Report*, DA 15-982 at 2 (Aug. 31, 2015) (emphasis added).

Third, CVCC argues that AllVid is needed to provide lower-cost alternatives to set-top boxes. That ignores marketplace realities. Free MVPD apps are already available that make cable programming available to more retail devices like tablets, smart phones, and streaming boxes like Roku than there are set-top boxes. By contrast, AllVid would impose significant new costs on consumers.

I. AllVid Requires Consumers to Lease a New Government-Mandated Box from their MVPD in Order to Serve Retail Devices

NCTA has previously explained that CVCC's AllVid proposal cannot be implemented from the cloud and would require any consumer using a retail device in their home to also use a new, MVPD-provided auxiliary device.³ CVCC disputes the point, but eventually grudgingly admits that its proposal requires an in-home box to implement the security it has proposed.⁴

AllVid proponents built their technical proposal on DTCP-IP and UPnP, and that design has significant limitations. CVCC admits that DTCP-IP caps the number of connected devices at 34 and uses localization metrics (measuring round trip time and 3 hops) that do not work with cloud delivery.⁵ It tries to dismiss the device cap as not "technical"⁶ – but the cap is part of DTCP-IP security requirements. DTCP-IP is still based on point-to-point in-home delivery, just as it was when DTCP was designed nearly twenty years ago for the IEEE-1394 connector from one device (e.g., a set-top box) to the one right next to it (e.g., a TV). That is why it capped devices at 34 and requires localization. CVCC acknowledges that the DTCP-IP localization tools depend on distribution from an in-home box, not from the cloud.⁷ In other words, quite apart from its other limitations that the DSTAC Report and Comments have described,⁸ the AllVid

³ See NCTA Comments at 25; NCTA Reply Comments at 28-29, 35-36; Letter from Neal Goldberg, NCTA to Marlene H. Dortch, Secretary, FCC, MB Docket 15-64 (Dec. 14, 2015).

⁴ CVCC December 18, 2015 *ex parte* at 3 (DTCP requirements to use localization metrics measuring round trip time and 3 hops "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.")

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ DTCP is too limited and inflexible to deliver the services now provided by the competitive and dynamic security market, like electronic sell through of movies. Neither content providers nor distributors treat DTCP, which is a link-layer protection system, as sufficient unto itself. DTCP has been slow to evolve since its development nearly twenty years ago for the IEEE-1394 connector, and with a government-mandated monopoly would likely be even slower to innovate. NCTA Reply at 28-29, 35-36; WG2 Report at 9; WG3 Report at 18; WG4 Report at 24, 78; MPAA Comments at 5-7; Transcript of Aug. 4, 2015 DSTAC meeting at 62-63; Application-Based Service Advocates August 7 Response at 6-7, 12-13; Verimatrix Comments at 7-8 ("Link protection is useful for protecting content in certain situations, *e.g.*, passing content from point A to point B, but it lacks the richness of business model support and persistent protection of a DRM."). Anointing DTCP as the universal solution would also create a single point of attack that would contravene DSTAC's "strong recommendations to avoid rigid and/or single implementations (one-size-fits-all) that significantly limit[] innovation, competition, or increases security risk." WG3 Report at 18.

proposal to use DTCP-IP for cloud delivery does not meet the localization requirements of DTCP-IP itself, and the CVCC proposal needs to change – again.⁹ A change to the DTLA/DTCP license agreement does not solve the problem. To remove these built-in security restrictions would fundamentally change the entire impetus for creating DTCP, and would completely re-write many programming agreements that limit content to in-home consumption. Nor does CVCC solve the problem by suggesting that “an MVPD can replace home network localization methods with one of many available techniques.”¹⁰ On the contrary, the AllVid proponents have already rejected and disabled the DRMs and apps that MVPDs use as part of localization, security, geo-filtering and geo-fencing.¹¹ Despite CVCC’s repeated claims, on the DTCP front alone, its proposal is not a viable, “off-the-shelf” solution ready to go.

UPnP presents similar in-home limitations. UPnP was explicitly designed for the scale of a home network with a single subnet and a limited number of devices. From their beginning, UPnP products and UPnP specs have been designed to let individual consumer-owned devices find each other *on local home networks*, not for connecting all MVPD households and all their devices to the cloud.¹² CVCC claims that PCs can be UPnP compatible on the local home network, but that does not mean that the PCs support national distribution from the cloud using UPnP – they do not. This limitation is not a “business choice” by MVPDs, as CVCC contends;¹³ it is the technical security characteristic of UPnP—you would not want your neighbor to be able to discover and access devices in your home. CVCC claims that CableLabs is working to make UPnP operable from the cloud. But CableLabs’ work involves support for *VidiPath to serve an app from the cloud using an apps-based remote user interface (RUI) on the retail device*.

⁹ CVCC December 18, 2015 *ex parte* at 3. Throughout the DSTAC process, AllVid proponents struggled and failed to describe a workable solution, making many changes, leaving basic details still “to be determined,” calling for many new inventions and “extensions” of existing technologies, admitting “that there might not be a current standard that exists that fits the bill absolutely,” and punting critical security elements “to be defined in the future” or to “finagle maybe.” *See, e.g.*, Transcript of Aug. 4, 2015 DSTAC meeting at 190 (Amazon’s representative); *Id.* at 73-74, 75-76, 80, 107 (Amazon’s representative); *Id.* At 187 (Public Knowledge’s representative). In initial Comments filed in early October, 2015, AllVid proponents claimed to be presenting a “mostly” “off the shelf” solution, requiring “no changes” in MVPD networks and “nothing new” beyond “existing standards and technology ‘borrowed’ from CableCARD.” Public Knowledge Comments at 18; Hauppauge Comments at 2. By the time of a late October *ex parte* presentation to the Media Bureau, the AllVid proponents abandoned what they spent months advocating in DSTAC and put forth an entirely new proposal. In DSTAC, they suggested 38 protocols (existing or to be invented). Their new proposal dropped 31 of those, kept 7 (mostly minor), and offered 10 new ones. None of these changes make it any easier to invent, develop or implement their proposals.

¹⁰ CVCC December 18, 2015 *ex parte* at 3.

¹¹ In addition, CVCC also claims (as we discuss below) that it should not be bound by any restraint that an MVPD places on what it considers “fair use.” So it is by no means clear that AllVid would actually support localization at all, further jeopardizing security and ignoring the requirements of content distribution agreements.

¹² As the supporting materials for UPnP explains, “UPnP technology targets home networks, proximity networks and networks in small businesses and commercial buildings.” <http://upnp.org/about/what-is-upnp/>. The UPnP spec provides that only Link-Local and Site-Local scoped multicast messages may be used. “Devices and control points SHALL NOT send Global scoped, Organization-Local scoped, or Admin-Local scoped multicast messages.” UPnP Device Architecture 2.0, section A.2.3 (Document Revision Date: February 20, 2015).

¹³ CVCC December 18, 2015 *ex parte* at 2, n.11.

VidiPath simply uses UPnP to discover the set-top within a single home network and then downloads the MVPD app from the cloud to access the desired content. CableLabs' work would not make UPnP scalable to the cloud. It instead reflects movement by the market to apps-based approaches for delivering video and other services.

CVCC argues in the alternative that AllVid may require an in-home box, but that "existing set-top boxes" can be used as an "interim gateway" and/or modems could just add a "virtual headend."¹⁴ As previously explained in the DSTAC Report, existing set-top boxes do not serve as "interim gateways" for AllVid and AllVid is not supported by existing boxes, nor can one simply "add" a virtual headend to a modem.¹⁵ It would require the creation of an entirely new device and new network protocols to provision and manage that device, new operational support systems, and the very kind of network re-architecting that DSTAC said must not be required of MVPDs. By consensus the DSTAC Report concluded that "It should not be necessary to disturb the potentially multiple present and future security and other network technology choices made by cable, DBS and IPTV systems"¹⁶ and further stated that "It is not reasonable to expect that all operators will re-architect their networks in order to converge on a common solution."¹⁷ CVCC's latest proposal would contravene these consensus conclusions which they agreed to in the DSTAC report.

Nor can CVCC reasonably assume that a modem-based AllVid service is "likely to be available"¹⁸ as MVPDs transition to IP. DSTAC reported that "while MVPDs are adding IP

¹⁴ CVCC December 18, 2015 *ex parte* at 2, 3, n.15.

¹⁵ See WG4 Report at 149, n. 53 ("The Device Proposal also mischaracterizes VidiPath as some sort of transitional black box that 'converts' video services to unbundled IP streams. As detailed in the Report, VidiPath is app delivery vehicle."); *Id.* at 152 ("the Device Proposal states that because many MVPDs already have deployed equipment in the home, they 'may be convertible to an interim gateway by enabling the Ethernet interface already on the device.' This optimistic theory is unsupported by any analysis, even a cursory one, and runs counter to the decades of experience of MVPDs who continually deploy new generations of in-home hardware after previous generations are found to lack the ability to accept new, more complex and larger software downloads that expand capabilities and provide new features. ... MVPD service is not a collection of "content items" and "micro-services." Most MVPD apps will or have the capability to hit multiple servers for data necessary to provide the service as an integrated whole. Different networks use different approaches for sound technical reasons. It is no trivial task to create and utilize an interface different than the one that has been optimized for the MVPD's specific network. ... That is why applications have developed as the bridge. Applications code this diversity and complexity inside the app, delivering to an ever-increasing number of retail devices, without ever having to build a parallel network or slow network innovation."); *Id.* at 151 n. 58 (explaining that even with AT&T's IP-based service, neither U-Verse nor instant channel change can deliver service as imagined by the AllVid proponents). See also MB Docket 15-64, Application-Based Service Advocates, Response to Competitive Navigation System Interoperability Additional Material (Aug. 7, 2015) at 8 ("All MVPDs would be required, in addition to pursuing their own network evolution, to deploy a second overlay infrastructure to support this proposal, at significant cost and after a lengthy development process, following a potentially even longer standards process. ... none of the MVPDs current architectures are evolving in alignment with the many protocols and interfaces referenced by their proposal."); NCTA Reply at 25 n. 68 ("neither VidiPath nor DOCSIS modems can operate as interim AllVid gateways.").

¹⁶ DSTAC Summary at 2.

¹⁷ *Id.* at 3.

¹⁸ CVCC December 18, 2015 *ex parte* at 3.

delivery to their service, they are not all doing so at the same pace or through the same architectural approach” and that “DBS systems will never evolve to IP carriage or encapsulation of their broadcast.”¹⁹ ACA has explained that “most [cable operators], including some that are still operating analog or hybrid analog/digital systems, are years away from transitioning to IP, which would today require the investment of millions of dollars in network upgrades.”²⁰ In short, the IP transition for the cable industry will be a lengthy process.²¹

Whatever the rudimentary diagrams attached to CVCC’s *ex parte* are professing to illustrate, CVCC’s AllVid proposal requires any consumer using a retail device in their home to also use an MVPD-provided auxiliary device. By contrast, today’s app-based solutions make cable service available to retail devices like tablets, smartphones, and streaming boxes like Roku without a set-top box—and apps support more retail devices than there are set-top boxes. In addition, in-home networks already deliver service to lightweight “client” devices over the home network and can deliver service to retail client devices with no need for a connected set-top box. AllVid is entirely unnecessary to provide consumers with home networking solutions or with choices for receiving services on multiple devices without a set-top box.

II. AllVid Would Alter MVPD Services and Abrogate the Licenses and Technological Protection Measures that Protect Content As Required by Content Providers and Distributors

CVCC’s second argument is that its AllVid proposal would not alter MVPD services. This is untrue for many reasons, including the fact that CVCC seeks an FCC rule that would free retail device manufacturers from both license responsibilities to content providers and from technological protection measures designed to ensure that the terms of distribution are respected as content flows from content providers to distributors through equipment to subscribers. CVCC points to the private Google demo to claim that AllVid “does not alter MVPD linear content or advertising.”²² But that is exactly what AllVid would permit. It would allow tech companies like Google to take content, slice and dice and re-purpose it in any way it wants, collect and monetize customer viewing data without Title VI privacy safeguards, and create an entirely new video *service* without negotiating or paying for it.²³ TiVo already repurposes cable content in

¹⁹ WG4 at 152.

²⁰ Comments of ACA at 3-4.

²¹ WG2 Report at 23-34.

²² CVCC December 18, 2015 *ex parte* at 3.

²³ See Letter from Devendra T. Kumar, Counsel for TiVo, to Marlene H. Dortch, Secretary, FCC, MB Docket 15-64 (Jan. 13, 2016) (“The TiVo Representatives made clear that competitive device providers are not and should not have to be bound to programming contracts entered into by MVPDs to which they were not party.”) Public Knowledge claims respect for copyright law, but it does not consider AllVid manufacturers to be a party to or 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

dubious ways, such as by overlaying ads on top of broadcast signals carried on cable. AllVid would invite and expand such practices without limit.

Of course, it is totally unsurprising that Google and other AllVid proponents would prefer to sidestep these inconvenient realities, and choose *not* to highlight in their demo how a box without license responsibilities or technological protection measures can rearrange, exile, or drop channels and overlay ads and drop apps and interactive elements that are parts of MVPD service; or mention how their solution *du jour* weakens security in a world of growing hacks, disables the security needed for electronic sell through of movies, enables the collection and resale of customer viewing data, and removes the competitive DRMs that accommodate rapidly evolving consumer offerings.

To date, CVCC still hides the details of exactly what was demonstrated. NCTA requested that CVCC be required to disclose the specifics, but to date CVCC has refused.²⁴ CVCC's *ex parte* of December 23, 2015, does not reveal the equipment and standards used or provide a diagram of hardware elements, end-to-end connections, protocols, software, or the supposedly "off-the-shelf" technologies used to connect from all MVPD networks to the display. It does not reveal the two MVPD services used, the programming processed, or the differences from prior proposals. It claims that the approach "could be implemented by any existing MVPD without changes to its network architectures or services," but provides no technical foundation for the breezy assertion. It avoids responding to any question about support for all integrated programming enhancements, apps and on-demand content of modern MVPD service; how the "solution" supports the distinctive, branded, differentiated retail offerings of *each* MVPD; how it ensures respect for programming licenses and agreements that establish terms for payment, packaging, presentation, protection and use of content; how it bars tech companies from unauthorized overlaying and selling advertising, or collecting and monetizing metadata arising from programming; the supposed technical support for the many emergency alert protocols actually used by other MVPDs' networks, rather than the one simulated alert it claims to have shown; or whether it would provide consumers with all of the statutory privacy and other consumer protections built into Title VI. Its refusal to answer can only mean that the AllVid proposal fails on all of these counts.

A&E Television Networks, AMC Networks, Discovery Communications, NBC Universal, Scripps Networks, The Walt Disney Company, ESPN, NCTA and MPAA have all

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 (Mr. 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).

²⁴ Letter from Neal Goldberg, NCTA to Marlene H. Dortch, Secretary, FCC, MB Docket 15-64 (Dec. 18, 2015).

explained the critical role that content licensing plays in the distribution of MVPD and online video programming.²⁵ If there are links in the distribution chain that lack direct privity with content owners, then complementary technology license regimes and technological protection measures are designed to ensure that the terms of distribution are respected as content flows from content providers to distributors through equipment to subscribers. The DSTAC Report explains in great detail that trust infrastructure as it connects content providers, advertisers, MVPDs, security vendors, set-top box manufacturers, chip vendors, set-top box application providers, set-top box middleware providers, metadata providers, secure key provisioning services, and subscribers.²⁶ Apps and DRMs serve as critical parts of these technological protection measures, but are not supported in AllVid. The programmers have warned that the CVCC’s “end run” proposal around licensing agreements, upon which their “entire business model and ability to meet evolving consumer demand and expectations is built,” would have a “severe negative impact on the development of programming and innovation in distribution.”²⁷

Today’s flourishing world of video in iOS, Android, PCs, Macs, Smart TVs, gaming stations, Roku, HTML5 and VidiPath is based on interactive apps and DRM. The approach has been embraced by platform developers, CE device manufacturers, content publishers and online and MVPD service providers, and consumers. Further endorsement of this approach was evident at the 2016 Consumer Electronics Show, at which Consumer Technology Association (formerly CEA), device manufacturers, distributors, content providers and security companies from across the worldwide 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”²⁸ – just as proposed in the apps-based approach reported in DSTAC. The technology and ecosystem is built on apps offered by online and MVPD service providers and content publishers. Some of the parties that are supporting GIVE once led the campaign for US-specific CableCARD regulations, but GIVE recognizes that unified global approaches are now vital in the increasingly international market. Dictating a one-off AllVid U.S. government mandate would isolate the U.S. video distribution market from the rest of the world, just as CableCARD did, and leave the U.S. behind in the global migration to video solutions based on HTML5, DRMs, and apps.

²⁵ Letter from Neal Goldberg, NCTA to Marlene H. Dortch, Secretary, FCC, MB Docket 15-64 (Dec. 16, 2015); Letter from Motion Picture Association of America et al to Marlene H. Dortch, Secretary, FCC, MB Docket 15-64 (Nov. 5, 2015); Letter from A&E Television Networks, LLC, AMC Networks Inc., Discovery Communications, Inc., NBCUNIVERSAL, Scripps Networks Interactive, Inc., the Walt Disney Company and ESPN, Inc., Time Warner Inc., 21st Century Fox, Inc., Viacom Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket 15-64, (Jan. 14, 2016) (“Programmers’ January 14, 2016 *ex parte*”).

²⁶ WG2 Report at 24-29.

²⁷ Programmers’ January 14, 2016 *ex parte* at 3-4.

²⁸ 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.)

CVCC raises a blanket claim of “fair use” to resist any obligation to accept licensing responsibilities or the technological measures that support them. It declares “absurd” that MVPD contracts and technological measures “could restrict the capabilities of competitive devices or override consumer fair use.”²⁹ It argues that no matter how much MVPD service is stripped, dismantled or overlaid, no matter how much content is misappropriated and redistributed without regard to license rights, it would not constitute any cognizable “electronic or physical harm to the MVPD service” or “unauthorized receipt of service.”³⁰

The Copyright Office has rejected this claim that “fair use” justifies a blanket circumvention of restrictions that control the use of licensed video. The Copyright Office periodically reviews requests to review various technological protection measures and permit circumventions that would otherwise be forbidden under the Digital Millennium Copyright Act (DMCA). CVCC member Public Knowledge asked the Copyright Office to permit circumventions to allow space- and format-shifting of audiovisual works and other copyrighted works as fair use, even if such uses were prohibited by technological protections in devices and distribution systems. The Copyright Office rejected the claim in October, 2015, finding that the continued growth of licensed digital distribution services provides meaningful alternatives to circumvention; that broad-based space- or format-shifting would undermine these emerging online distribution models; and that the law of “fair use” does not sanction such broad-based circumvention. It concluded that “the policy judgments surrounding the creation of a novel exception for space- or format-shifting of copyrighted works are complex and thus best left to Congress or the courts.”³¹ Moreover, as the major programmers have explained in opposing the CVCC’s proposal, “fair use” is “largely irrelevant” to the CVCC proposal: fair use is only available as a defense to end-user consumers and cannot excuse third-party commercial monetization of copyrighted works.³² Likewise, the FCC has already ruled that Section 629 authorizes the Commission only to assure a market for competitive availability of *equipment* “used to access services provided by multichannel video programming distributors,” not to receive some derivative service that a CE manufacturer may wish its product to provide.³³

²⁹ CVCC December 18, 2015 *ex parte* at 5.

³⁰ CVCC December 18, 2015 *ex parte* at 5. Even in the narrow context of harm to customer service that CVCC is willing to acknowledge (in footnote 23), the AllVid proposal makes “optional” (that is, removes) device diagnostics that MVPDs use to resolve consumer complaints. Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge to Marlene H. Dortch, Secretary, FCC, MB Docket 15-64 (October 20, 2015) at 3 (“Diagnostics service is optional.”) NCTA Reply Comments at 25.

³¹ U.S. Copyright Office, *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, 80 Fed. Reg. 65944, 65960 (Oct. 28, 2015).

³² Programmers’ January 14, 2016 *ex parte* at 5.

³³ *Gemstar Int’l Group, Ltd.*, 16 FCC Rcd 21531, 21542, ¶ 31 (2001) (“Section 629 is intended to assure the competitive availability of *equipment*, including ‘*converter boxes*, interactive communications *equipment*, and other *equipment* used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.’ The Commission has not found that the right to attach consumer electronics equipment to a cable system can be expanded to include the obligation by cable operators to carry any service that is used by such equipment, nor is the legislative history supportive of such a requirement. Indeed, the

III. AllVid is Not Necessary to Assure Low-Cost Options for Consumers to Receive Online or MVPD Service on Retail Devices

CVCC's third claim is that AllVid is needed to provide lower-cost retail alternatives to set-top boxes, and that it needs the latitude to disregard licenses and disaggregate MVPD service in order to feature over-the-top content.³⁴ But misappropriating content is neither a lawful nor necessary way to obtain content. Hulu, Netflix, Sony, Amazon, Sling TV and all MVPDs have negotiated rights and some are adding their own original content. Nothing in AllVid is needed for any retail equipment manufacturer to locate, promote, pay for and feature online programmers on their retail boxes. Retail devices uninterested in negotiating licenses with content providers can present video apps from MVPDs and from OVD service providers, like Sony Vue, Amazon, Netflix or Sling TV, who *are* licensed. Free MVPD apps are already available that make cable programming available to more retail devices like tablets, smart phones, and streaming boxes like Roku than there are set-top boxes. One in five households already own an apps-based Roku set-top box, an Apple TV, Amazon Fire TV, or other streaming device that can feature any such content. Roku includes a Time Warner Cable app, a Charter cable app, and 2,500 other channels. Roku alone has sold over 10 million retail set-top boxes with this model, outselling TiVo ten-to-one.

Moreover, rather than lowering costs, AllVid would impose significant new costs on consumers, just like the failed integration ban. It would require re-architecting much of the MVPDs' infrastructure, from back-office systems, to headends, uplinks, and central offices, delivery platforms, network equipment, content servers, and security components, as well as creating and deploying new devices for the home. The costs of researching, developing, standardizing, integrating and installing all of this new equipment would inevitably fall to all subscribers whether or not they wanted to buy an AllVid device.³⁵

Conclusion

AllVid proponents repeatedly claim they have a viable, off-the-shelf solution ready to go, and each time they are confronted with technical reality to the contrary. In this round, CVCC grudgingly acknowledges that the DTCP-IP security they offer as a complete solution does not work to localize content without an in-home box, but offers no solution.

scope of Section 629 apparently was 'narrowed to include only equipment used to access services provided by multichannel video programming distributors.'" (citing S. Conf. Rep. No 104-230 at 181 (1996), footnotes omitted)

³⁴ CVCC December 18, 2015 *ex parte* at 4. CVCC cites concerns raised by the American Cable Association over today's cost of programming. But notably, ACA is not seeking a rule that would authorize reception and use of programming for free and without license. An AllVid mandate is opposed by the small IPTV providers and small cable operators represented by ITTA, NTCA and ACA. Letter from Motion Picture Association of America et al to Marlene H. Dortch, Secretary, FCC, MB Docket 15-64 (Nov. 5, 2015). ACA reports that an AllVid mandate could "force many MVPDs to discontinue video service altogether." ACA Comments at 7-10.

³⁵ NCTA Comments at 26-27.

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CVCC's rhetoric does nothing to address the technical and legal failings in the AllVid proposal. NCTA has not "acknowledged" the "technical validity" of the proposal, nor are its objections "baseless" or "last ditch."³⁶ As demonstrated above, the deficiencies in AllVid have long been identified within the DSTAC process and in public comment. The AllVid proposal would require another government-mandated box in the home, undermine the critical content licensing that supports the distribution of MVPD and online video programming, and remains half-baked, unnecessary, and contrary to law.

If you have any further questions, please contact me.

Respectfully submitted,

/s/ Rick Chessen

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³⁶ CVCC December 18, 2015 *ex parte* at 1, 2 and 3.