



January 26, 2016

Via Electronic Filing

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

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

Dear Ms. Dortch:

This letter responds to the letter filed on January 21, 2016 by NCTA in the above-captioned docket. NCTA disputes a host of facts that the Consumer Video Choice Coalition (“the Coalition”) and its members have presented about the competitive navigation device solution. Never, however, does NCTA dispute the fact that cable companies reap some \$20 billion in annual revenue from leasing set-top boxes to subscribers, as shown in the study conducted by Senators Markey and Blumenthal.¹ NCTA also cannot dispute the facts presented recently by Public Knowledge and the Consumer Federation of America that, while the cost of most consumer electronics has gone down, prices for set-top boxes leased to subscribers by cable operators have risen dramatically to the point at which American consumers have been overcharged between \$6 and \$14 billion per year.²

NCTA’s other arguments are wide of the mark, as has been demonstrated time and again by the Coalition, its members, and other interested parties.³ NCTA asks the Commission to

¹ See 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> (determining that MVPDs generate \$19.5 billion every year just from set-top box leasing fees, which cost the average family almost \$232 annually); see also *Media Bureau Seeks Comment on DSTAC Report*, MB Docket No. 15-64, Public Notice, DA 15-982 (rel. Aug. 31, 2015), Letter of Senators Markey, Sanders, Blumenthal, Wyden, Franken, Cantwell, Booker, Warren to FCC Chairman Tom Wheeler, Nov. 9, 2015 (urging the Commission to “initiate a rulemaking” that would ensure consumer choice for accessing MVPD content).

² Ex parte letter of Consumer Federation and Public Knowledge, Jan. 20, 2016.

³ See Coalition Comments of Oct. 8, 2015; Ex parte letter of Public Knowledge, Oct. 20, 2015; Coalition Reply Comments of Nov. 9, 2015; CCIA Reply Comments of Nov. 9, 2015; TiVo Reply Comments of Nov. 9, 2015; Ex parte letter of INCOMPAS, Nov. 18, 2015; Ex parte letters of Public Knowledge, Dec. 3 and 7, 2015; Ex parte letter of TiVo, Dec. 7, 2015; Ex parte letters of Coalition, Dec. 14 and 15, 2015; Ex parte letter of INCOMPAS,

believe that cable has been consumer-friendly and strongly innovative in its technology. The only plausible response is, to paraphrase Chico Marx - who are you going to believe, NCTA or your own eyes?⁴ It is time for the Commission to issue a Notice of Proposed Rulemaking to implement the competitive navigation device solution.

- **The competitive navigation device solution does not require a separate box.**

Demonstrations of the competitive navigation device solution conducted by the Coalition⁵ showed that no extra device is required. During the demonstrations, the virtual headend software was running on existing set-top hardware that would already be in a subscriber's home. No "government-designed intermediary box" is or would be required.⁶

The virtual headend is based substantially on the same technologies as VidiPath.⁷ DLNA has defined VidiPath with the express purpose of enabling cloud-based servers, with secure

Dec. 16, 2015; Ex parte letter of TiVo, Dec. 17, 2015; Ex parte letters of Coalition, Dec. 18, 22, and 23, 2015; Ex parte letter of TiVo, Jan. 13, 2016, Ex parte letter of Coalition, Jan. 14, 2016; Ex parte letter of Hauppauge Computer Works, Jan. 14, 2016; Ex parte letter of Google, Jan. 15, 2016; Ex parte letter of Public Knowledge, Jan. 19, 2016; Ex parte letter of Coalition, Jan. 22, 2016.

⁴ *Duck Soup* (Paramount Pictures 1933); *The Marx Brothers: Quotes*, MARX-BROTHERS.ORG, <http://www.marx-brothers.org/info/quotes.htm> (last visited Jan. 26, 2016).

⁵ See INCOMPAS ex parte letters of Dec. 14 and 16, 2015.

⁶ The FCC's "Gateway" idea, as set forth in the National Broadband Plan, assumed that MVPDs would continue to use proprietary digital rights management systems ("DRMs") in all of their set-top boxes. See National Broadband Plan, Section 4.2, available at <http://www.broadband.gov/plan/4-broadband-competition-and-innovation-policy/>. AllVid proponents conceded this use, but proposed "common reliance" on an additional interface to home networks. *It is the NCTA that continues to support proprietary DRMs as per AllVid*. The competitive navigation device solution, however, does not entail common reliance on a separate gateway box. Instead, MVPDs would have several ways of providing a virtual headend, while remaining free to compete by offering their own fully integrated set-top boxes.

⁷ See Ex parte letter of Public Knowledge, Oct. 20, 2015, attachment at 3. ("Industry standards and specifications sufficient to comprise a Virtual Headend system can be referenced in at least two ways -- in terms of CVP-2 certification requirements associated with VidiPath, with modifications; or in terms of specific standards and technologies, starting with either the DLNA CVP-1 or CVP-2 profiles.").

delivery using DTCP-IP, and MVPDs are on record as supporting VidiPath.⁸ Furthermore, DTLA, the licensor and source of DTCP, has described Internet delivery via DTCP.⁹

- **EAS and other technologies comprising or used in a virtual headend are neither novel nor inadequate.**

The Coalition stands by its assertions that technologies comprising a virtual headend are well known and understood,¹⁰ as are the means of EAS compliance. In the Coalition demonstrations, EAS messages were received by the virtual headend and then rebroadcast and displayed on each competitive navigation device being demonstrated. Nothing in Section 629 or STELAR relaxes the obligation of MVPDs to support competition and competitive devices. As has been demonstrated, EAS support will not be unduly burdensome. EAS has been supported in the CableCARD environment and would be supported in any virtual headend deployment.

- **Consumers will have an enhanced choice of interactive enhancements and features.**

Competition drives down prices and enhances features in markets for other electronic devices. The “interactive” techniques and services touted by NCTA are well-known, as is any MVPD’s ability to market to its subscribers and tout the capabilities of its own services and leased equipment. To the extent these features differ from what a competitive navigation device

⁸ “DLNA has extended the VidiPath guidelines to enable service providers to deliver Ultra-HD content directly from the cloud to consumer electronics inside and outside the home.” *Guidelines*, VIDIPATH, <http://vidipath.com/guidelines/> (last visited Jan.26, 2016). VidiPath has been cited as a path to “transform subscription television delivery” through “migration to cloud-based architectures.” *VidiPath Poised to Transform Subscription Television Delivery According to New ABI Research Study*, DLNA (May 11, 2015), <http://www.dlna.org/news/2015/5/14/vidipath-poised-to-transform-subscription-television-delivery-according-to-new-abi-research-study>. See also *DLNA’s VidiPath Guidelines Could Be Pay TV Game Changer*, SCREENPLAYS MAGAZINE (Oct. 15, 2014), available at <http://www.screenplaysmag.com/2014/11/04/dlnas-vidipath-guidelines-could-be-pay-tv-game-changer/> (quoting Amol Bhagwat, CableLabs and DLNA Executive, as saying, “I think VidiPath can be extended for direct cloud content delivery from the cloud to the consumer’s home. That can happen in the home and maybe outside the home as well. So those are some of the actual use cases that are worth considering.”); Jeff Baumgartner, *ABI Sees Surge in VidiPath-Certified Devices*, MULTICHANNEL NEWS (May 15, 2015), <http://www.multichannel.com/news/next-tv/abi-sees-surge-vidipath-certified-devices/390664> (“Down the road, VidiPath has the potential to enable new cloud-based deployment models from both traditional operators as well as Over-the-Top providers, helping to pave the way for TV Everywhere delivery.”).

⁹ See Ex parte letter from Stephen P. Balogh, President, Michael Andre, Chair, Technical Working Group, Seth D. Greenstein, Chair, Policy Group, DTLA, Oct. 8, 2015 (agreeing that “DTCP technology can fulfill an important role in an end-to-end protection solution for audiovisual content delivered by service providers to consumer home and personal networks.”).

¹⁰ This was illustrated in the Public Knowledge October 20 filing and, as recounted in the INCOMPAS ex parte letters of December 14 and 16, 2015 and the Coalition ex parte letters of December 18 and 23, 2015, demonstrated by the Coalition. Neither the fact of widespread MVPD and home use and reliance on these technologies nor the Coalition assertion that these technologies are well-known has changed.

offers, they provide a marketing opportunity for the MVPD. The Coalition has demonstrated that the virtual headend provides for expeditious authentication and operation on additional MVPD systems.¹¹ Therefore, owning a competitive navigation device also would allow consumers to *choose among MVPDs*, further enhancing competition and the development of novel features. The notion that attributes such as 4K content or camera angles will be left out is a red herring – NCTA has not and cannot produce any evidence that this would be the case.

- **NCTA would afford content providers the right to stifle the public interest through contractual impositions.**

NCTA would have copyright owners use programming contracts to override consumers' expectations of competition and fair use, notwithstanding the requirements of Sections 76.1201 to 1206 of the Commission's rules. Had this been the status quo, many innovations that have improved consumers' lives, including the DVR, would never have seen the light of day. Copyright law reflects a balance of interests – it does not allow content owners to become the sole arbiters of innovation.¹² Furthermore, any allegations that competitive device manufacturers have replaced broadcast advertising are incorrect and not supported by evidence in the record.¹³

- **There is no serious expectation that privacy would be compromised.**

While device manufacturers are not cable operators and are not subject to cable privacy laws, they are subject to other privacy laws. Over the past several years, 46 of 50 states have enacted laws governing data privacy and security. The California Online Privacy Protection Act, for example, governs web sites and online services that collect personally identifiable information.¹⁴ Competitive offerings may also be subject to the Video Privacy Protection Act. State regulators may bring enforcement actions against device manufacturers if they fail to comply with applicable state privacy laws, and the FTC and/or state regulators may bring enforcement actions against device manufacturers if they fail to comply with privacy policies for acts of “unfair competition.” Many device manufacturers also operate in Europe and are subject to the European Union Data Privacy Directive. There is no reason to expect that data collection, aggregation, and privacy policies for leased and competitive device providers will vary significantly.¹⁵

¹¹ Coalition ex parte letter of December 23 at 2.

¹² *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984); *Fox Broad. Co. v. Dish Network, LLC*, No. CV 12-04529 DMG (C.D. Cal. Jan. 12, 2015).

¹³ TiVo has not altered or replaced advertisements in broadcast signals. It has displayed promotional messages as part of its user interface, such as when the user pauses or deletes a program, and has allowed advertisers and programmers to enhance their own advertisements and promotions by inserting interactive tags. See *TiVo Advertising*, TiVo, <https://www.tivo.com/tivoadvertising/tivoadvertising.html> (last visited Jan. 26, 2016).

¹⁴ The Online Privacy Protection Act of 2003, Cal. Bus. & Prof. Code §§ 22575-22579 (2004).

¹⁵ Compare policies of Rentrak, in which MVPDs have ownership interest and contracts re data, http://www.rentrak.com/section/about_rentrak/who_we_are.html, <http://www.fiercecable.com/story/dish-network-gets-7-stake-rentrak-exchange-exclusive-set-top-data/2012-08-10>,

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NCTA's filing ignores the *real* burden on consumers. As asserted in the Consumer Federation and Public Knowledge letter of January 20, 2016, American consumers continue to be overcharged *billions* of dollars annually in set-top box lease fees. As Consumer Federation and Public Knowledge note, the "best explanation of the set-top box market's exceptional ability to impose excess charges on consumers is its immunity to market forces and the failure of competition, both in pay TV more generally and in the set-top box market specifically." The time is long overdue for the Commission to initiate a rulemaking proceeding to bring competition to the market for navigation devices.

Respectfully submitted,

/s/ Consumer Video Choice Coalition

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