



National Cable & Telecommunications Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001
(202) 222-2300

www.ncta.com

Neal M. Goldberg
Vice President and General Counsel

(202) 222-2445
(202) 222-2446 Fax

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Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 15-64

Dear Ms. Dortch:

I am writing to respond to claims made in an ex parte filing submitted by Public Knowledge and the Consumer Federation of America on January 20, in the above captioned docket (“PK/CFA filing”). As detailed in the attachment to this letter, Chairman Wheeler and others have repeatedly cited the figures in the PK/CFA filing and the two deeply flawed “studies” on which they are based to support proposed “AllVid”-style set-top box regulations. But, in fact, as detailed in the attached, those “studies” paint a misleading picture about set-top box costs and pay-TV providers’ supposed profits from these boxes. If you have any questions about this filing, please contact me.

Sincerely,

/s/ **Neal M. Goldberg**

Neal M. Goldberg

Attachment

cc: Jessica Almond
Matthew Berry
Steven Broecker
Michelle Carey
Chris Clark
Robin Colwell
Mike Dabbs
Nicholas Degani
Hillary DeNigro
Lyle Elder
Eric Feigenbaum
Scott Jordan

William Lake
Mary Beth Murphy
Nancy Murphy
Brendan Murray
Marc Paul
Holly Sauer
Gigi Sohn
Louisa Terrell
Johanna Thomas
Jennifer Thompson
David Waterman

Fuzzy Math: Why the FCC’s Set Top Box Numbers Don’t Add Up

Exaggerating Set-Top Box Revenues and Ignoring Costs.

Chairman Wheeler and his allies have repeatedly cited two deeply flawed “studies” to support their proposed “AllVid” style set-top box regulations, painting a misleading picture about costs and TV providers’ supposed profits from these boxes.

- The limited ‘survey’ by Senators Markey and Blumenthal claims set-top box revenue for the 10 largest pay TV companies “*may be*” \$19.5 billion per year and that the average household spends \$7.43/month per box, for a total of \$231 annually. But those exaggerated totals ignore data provided *in the very same survey* on the substantial promotions and discounts that reduce consumer costs.
 - For example, two providers reported offering customers a free set-top box, and another reported an average discount of 37%. Failing to factor in these and other widely available discounts substantially inflates the purported cost paid by consumers.
 - The Markey/Blumenthal study ignores the availability of low-cost devices and “no box” apps that are already widely used, further distorting its “average” numbers.
- The FCC has touted a pseudo-study by the Consumer Federation of America that claims TV providers’ enjoy profit margins as high as 70% on leased set-top boxes. But CFA ignores the substantial *costs* involved in purchasing, maintaining, and installing these boxes, which contradict claims of excessive profits.
 - Cable companies alone, which serve only half of all pay-TV customers, spend \$7 billion each year on customer equipment purchases from independent manufacturers (according to SNL Kagan, a leading industry analyst) plus another \$1 billion on maintenance. These figures don’t even include the costs satellite and telco TV providers incur each year to buy and maintain set-top boxes.
 - Failing to account for these costs renders CFA’s claims on set-top box margins incomplete and meaningless.
- Even if the FCC’s erroneous estimate of \$7.43/mo. average rental cost for set-top boxes were not exaggerated, that is still less than half of TiVo’s \$14.99 monthly service fee – – not even counting the \$299-\$599 up-front cost to purchase and own a TiVo box. By contrast, consumers renting a set-top box pay nothing up front, make no commitment, and can return the box at any time to upgrade to a new device with the latest technology or cancel service.

TV Providers Are Investing in “Apps” That Enable Millions of Retail Devices to Receive Service Without a Box.

TV providers are embracing new digital apps that allow viewers to watch on virtually any retail device with a screen without any need for a set-top box:

- Apps are free and work with your subscription on devices customers *already* have in the home, such as tablets, smartphones, Smart TVs, computers, and devices like Roku.

TV providers' apps are now available on more than 460 million customer-owned devices – *more than twice the number of set-top boxes currently in use.*

- Apps are leading us towards a world with fewer and fewer set-top boxes: for example, Charter has explained that “with smart televisions and smart tablets, which essentially allow the TV or the tablet to operate as a set-top box and a TV combined, we think that incremental CPE [customer premises equipment] will become less and less a factor in our overall capital structure.”

CFA's “Apples to Oranges” Comparisons of Cell Phone and Cable Box Prices Are Inaccurate and Misleading.

CFA makes deceptive claims that consumer electronics costs have dropped 90% while set-top box costs have increased 185%. These claims ignore change in both the quality and quantity of set-top boxes over time:

- The basic 1994 set-top box used in CFA's chart cost less than \$2.50 per month. An equivalent basic device today, such as a digital adapter, generally costs \$1-3 per month and is sometimes offered free. Claiming these devices have gone up 185% in price is false.
- It's misleading and inaccurate to compare modern boxes – with digital DVRs, 500 GB or more of memory, multiple tuners, and Internet connectivity – to rudimentary 1994 devices. Does CFA genuinely believe that these full-featured devices should cost less than a 90's-era basic digital tuner?
- CFA fails to acknowledge that set-top box prices were largely regulated and capped by the FCC during the time covered by their “study,” so by law any increases in rates during that time were the result of increases in the actual cost of equipment – not bigger profit margins.
- Claims of hyper-reduction in the costs of consumer electronic equipment are also misleading:
 - CFA compared a \$1,000 StarTAC phone with a mobile phone allegedly available today for \$100. But most \$100 “prices” for phones today are subsidized by carriers as part of long-term service contracts, and CFA's own source for mobile phone prices acknowledges that phones without contracts cost \$300-500+.
 - Second, the price of comparable phones has not dropped at the pace suggested by CFA. The average selling price of an iPhone has **increased** over the last five years, and in the fourth quarter of 2015 was at its highest price ever at \$691. The claim that cellphone prices have dropped 90% is false.