



April 22, 2016

**VIA ECFS**

Chairman Tom Wheeler  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *Comments; Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*; MB Docket No. 16-42, CS Docket No. 97-80

Dear Chairman Wheeler:

We write to you on behalf of Cox Communications, Inc. ("CCI") and Cox Media Group ("CMG"), two Cox Enterprises, Inc. ("Cox Enterprises") businesses that collectively have been part of the video distribution marketplace for 68 years (collectively, "Cox").<sup>1</sup> With a parent company that has embraced innovation – often disruptive to its existing businesses – both companies are guided by principles of serving our communities and maximizing value for our customers. Having long operated under the same roof, we have a uniquely balanced appreciation for the

---

<sup>1</sup> Parent company Cox Enterprises, headquartered in Atlanta, Georgia, is a leading communications, media, and automotive services company with revenues of \$18 billion and approximately 55,000 employees. Founded by James Cox, Ohio's first three-term governor and the 1920 Democratic nominee for president of the United States, Cox Enterprises' communications and media operations have spanned 118 years as it expanded from a single newspaper operation in Dayton, Ohio, into radio station operations, then television stations, and subsequently cable TV and broadband.

Cox Communications, Inc. is a broadband communications and entertainment company, providing advanced video, Internet, telephone, home security, and automation services, as well as customized data and advertising solutions, over its own high-capacity, reliable, broadband network. CCI serves approximately 6 million residences and businesses across 18 states. Cox Media Group is an integrated broadcasting, publishing, and digital media company that includes the national advertising rep firms of CoxReps as well as 14 owned or operated broadcast TV stations, 59 radio stations, 7 daily newspapers, more than a dozen non-daily publications, and more than 100 digital services. CMG currently operates in more than 20 media markets and reaches approximately 52 million Americans weekly, including more than 31 million TV viewers.

various marketplace factors that drive content creation and the expansion of distribution technologies. While CCI and CMG share the same core values and overall marketplace insights, we approach our day-to-day businesses separately with our specific priorities in mind. It is, therefore, a rare FCC proceeding that prompts us to file jointly. However, we are moved to do so here, with a direct appeal to you, because we believe the NPRM's sweeping proposal<sup>2</sup> has little basis in market realities, lacks competitive parity, and would seriously and irreparably harm the complex underpinnings of content rights, security, advertising, and consumer privacy that have shaped the most vibrant video marketplace in history.

The absence of any clear future benefit to consumers is striking for such a broad proposal, and it stands in stark contrast to the benefits consumers are reaping *today* from our focus on extending our services through applications and other forward-looking technologies. Cox understands first-hand that our customers are best-served by innovation and not by unnecessarily disruptive government regulation. In this case, extending the life of a set-top box environment is the last thing the FCC needs to be focused on. The Commission should abandon this misguided approach in favor of a more tempered one that facilitates market-based solutions without regulatory imposition.

**The Services We Offer.** As an initial matter, we must correct a primary misconception that underlies the agency's proposal: that the set-top box is at the core of CCI's business. CCI is not in a commodity business of selling set-top boxes, and the marketplace the Commission purportedly is trying to foster is not a market we even participate in, let alone one we control. Both CCI and CMG are in the business of providing an end-to-end customer experience – we operate service businesses based on ongoing relationships with customers for whom we provide a reliable and compelling mix of content, interfaces, and features. As part of this end-to-end experience, CCI provides an affordable lease option for set-top boxes that we source, pay for, maintain, service, and upgrade to bring customers the viewing experience they demand. From a value perspective, even our most basic equipment option – though comparable in *cost* to 1994 prices – exponentially surpasses the *functionality* of set-top boxes from 20 years ago.<sup>3</sup> Through constant innovation, network investment, and successful partnering with content and technology companies, we have been able to meet evolving demand for high-definition (“HD”) content, video-on-demand, and interactive programming guides, as well as extend our services to mobile devices and other platforms, all the while bolstering a high-speed Internet business that is fueling the reach of an unprecedented array of online video programming and services. We have a proven track record of driving new technology responsive to consumer demand for new service features. And with no ties to

---

<sup>2</sup> *Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 31 FCC Rcd 1544 (2016) (“NPRM”).

<sup>3</sup> The most basic equipment option CCI offers at less than \$3.00 per month is HD capable, and, in the words of a customer recently posting to our online forum, is “FANTASTIC! ... Many more watchable channels are available than before. ... The remote is simple and well designed and the LAST button retains the previous channel after the minibox is turned off. You can change channels without entering 1000 before the channel number.... And, best of all, when you change the channels, the change is immediate .... [T]his is a great deal for \$3/month.”

equipment manufacturing and sales, we have never stood in the way of those seeking to pursue that business. As a pioneer in the competitive telephony market,<sup>4</sup> we clearly have never followed the model of the Bells and the so-called “black phone,” and there are no vestiges of this model in the video distribution marketplace or any other modern communications industry.

From the misplaced premise about CCI’s business, the proposal continues down the wrong path, trivializing the value of the product that CMG and other broadcast TV programmers offer. Advertising and copyright security is at the core of both of our businesses and cannot be written off as an afterthought, as the NPRM suggests. CMG in particular is in the business of producing, acquiring, and bringing to viewers high-value content. Our stations serve their local communities in many important ways, most notably through the production of high-quality local newscasts delivered along with popular network and syndicated programming. CMG’s local service is primarily supported by selling advertisers the exclusive right to reach its stations’ viewers by placing advertisements during popular programming. If the FCC allows new set-top box manufacturers to free-ride on our content by placing additional advertising material onscreen, such practices will devalue the platform CMG offers to advertisers and shrink the revenue that historically has sustained local TV news and other services. Moreover, the NPRM, with its myopic focus on attempting to drive retail navigation development, threatens the ability of companies like CMG to manage how high-value content is distributed, protected, and funded. Among other ramifications, if the NPRM’s proposal does not protect the copyrights of CMG’s programming suppliers, including the national TV networks, network programmers may be forced to find a more secure outlet for their programming online. This would endanger the entire network/affiliate model that has helped support local news and other services for decades and damage the information ecosystem for the local communities and viewers CMG serves.

**The Viewers We Serve.** When the Commission attempts to commoditize the services we provide, the viewer becomes the casualty. In subscribing to *our* services, a customer creates a relationship with *us* and expects (as the FCC’s rules require) *us* to deliver emergency alerts, controls over children’s advertising and viewing, closed captioning, video description, accessible guides, and a host of other functions and quality associated with the service. And when their viewing experience is not what they expect, customers call *us* – the service provider. The proposal to separate the service content from the service features would render that call a “wrong number,” squandering CCI’s long history as a trusted provider.<sup>5</sup>

---

<sup>4</sup> CCI was one of the first facilities-based competitors in the local telephone business and in offering broadband Internet access over its cable facilities.

<sup>5</sup> CCI is a leader in customer satisfaction, earning a total of 33 awards from J.D. Power and Associates, including 10 consecutive wins for residential phone and 8 awards for business services. Cox has also been recognized by other third parties, including *Multichannel News*, *PC Magazine*, and *Frost & Sullivan* for operational and product leadership.

Our experience and research shows that viewers want the full benefit of new technology, understandably without sacrificing quality of service, customer service, or affordability. CCI's most recent transition to an all-digital platform is demonstrative of the balance we regularly seek to achieve. Through this effort, we are bringing long-awaited additional value to customers transitioning off analog service (customers whom our research showed were the most disaffected about their level of service features, but most price-conscious), enabling access to HD content and the addition of an enhanced program guide and incremental video and music channels, while repurposing the bandwidth cleared from removing analog services to accelerate high-speed Internet speeds to 1Gig.<sup>6</sup>

CMG also has consistently been a leader in forging the path to next-generation distribution technologies and business models. We were a leader in the DTV transition, building out many of our digital stations years before the transition deadline, and we continue to champion the introduction of new and innovative ways to reach our viewers over the Internet and through mobile apps.<sup>7</sup> CMG's local television stations have developed news and weather apps that viewers can use on their mobile devices to view our stations' local news, weather, sports, and emergency content when they are away from home.<sup>8</sup> CMG now is working hard with its partners to make the next big transformation to the new ATSC 3.0 broadcast standard. Through our work with industry alliances and the Advanced Television Systems Committee, CMG has championed the development and adoption of ATSC 3.0, which will improve service to viewers by bringing them interactivity, ultra HD picture quality, advanced emergency alerts, more channels in the same bandwidth, mobile broadcast TV, and more.<sup>9</sup>

**The Damaging Effects of the NPRM's Proposal.** CCI and CMG always have embraced the dynamic changes that are a hallmark of the communications industry and continue to do so. We believe that technological developments bring great opportunities and an increasing ability to meet the demands of a new generation of TV viewers, and we agree with you that

---

<sup>6</sup> Ironically, it was another FCC technology mandate – common reliance on CableCARDs – that frustrated this effort for years, restricting CCI from making a low-cost, HD-capable equipment option of our own available even as we vowed to continue CableCARD support for retail set-top boxes. Letter from Natalie G. Roisman, Wilkinson Barker Knauer, LLP, Counsel to Cox Communications, Inc. and Cox Enterprises, Inc., to Marlene H. Dortch, Secretary, FCC, CS Docket No. 97-80, PP Docket No. 00-67 (July 28, 2010).

<sup>7</sup> CMG played a key role as one of 12 major broadcast groups comprising the venture that operated Dyle Mobile TV, utilizing the ATSC-Mobile DTV standard to offer viewers an easy way to experience and enjoy live broadcast TV on their mobile devices. While Dyle ultimately was unsuccessful, the effort reflects our ongoing drive to bring innovation to the viewing experience.

<sup>8</sup> See, e.g., WSB-TV, Channel 2 Apps, <http://wsbtvapps.com> (last visited Apr. 18, 2016); WFTV.com, Orlando News App, <http://wftvnewsapp.com> (last visited Apr. 18, 2016).

<sup>9</sup> America's Public Television Stations, *et al.*, Authorization of Next Generation TV for Permissive Use as a Television Standard, Joint Petition for Rulemaking (Apr. 13, 2016), [http://www.nab.org/documents/newsRoom/pdfs/041316\\_NextGenTV\\_Rulemaking\\_Petition.pdf](http://www.nab.org/documents/newsRoom/pdfs/041316_NextGenTV_Rulemaking_Petition.pdf).

consumers deserve choices and benefit from new, innovative ways to access video content on the device or app they prefer. We also believe that consumers are getting those options in an unprecedented fashion.<sup>10</sup> Consumers preferring a “boxless” environment have it in the form of over-the-top (online) viewing options for the content offered by programmers for that environment. Consumers who prefer a continuum of service that includes the content that programmers supply only for distribution within a protected network or app environment on negotiated terms have access to such service in the form of multichannel video programming distributor (“MVPD”) offerings, such as CCI’s Contour service, as well as via more than 100 programmer (HGTV, ESPN, etc.) apps using their Cox sign-in credentials. There also are many options in between, such as Roku and Apple TV boxes that stream content to the TV with feature rich interfaces.

It therefore is extremely puzzling to us that you propose to “fix” a marketplace that is not broken, and have proffered a “solution” that seems to do more harm than good. We foresee destructive results for television and cable advertising, breaking apart the model that drives investment in content creation and distribution infrastructure. For CCI, we predict there will be harms to customer service and to the overall cable value proposition. The proposal also threatens the very lifeblood of CMG through its dismissive approach to copyrights, programming agreements, and advertisements.

Finally, we cannot ignore the fact that in implementing Section 629 of the Communications Act, the FCC has a poor history in attempting to artificially create a retail set-top box market. Our experience is that these rules have been extremely costly to implement, with little to no corresponding consumer gain. There is nothing to support the belief that the NPRM’s proposal would be any different. Further troubling is the NPRM’s departure from any semblance of regulatory parity. If there were such parity, services like Netflix and Amazon, devices like Apple TV, and the envisioned Google devices or applications would be similarly encumbered by obligations to unbundle *their* services for other devices or applications to package as their own. And while CCI would be obliged to build a new delivery method that could feed service elements to these devices, there is no corresponding obligation to include all or any of our MVPD services in their offerings.

**A Much Better Way.** Past history and present day reality show that there is a much better way to reach the goal for which we all strive: a vibrant video distribution marketplace driven by

---

<sup>10</sup> The record the Commission has built over the years on the state of video competition bears this out. See, e.g., *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253 (2015). The Commission’s previous reports also appear at: *Implementation of Section 19 of the 1992 Cable Act and Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 9 FCC Rcd 7442 (1994) (“*First Report*”); 11 FCC Rcd 2060 (1995) (“*Second Report*”); 12 FCC Rcd 4358 (1997) (“*Third Report*”); 13 FCC Rcd 1034 (1998) (“*Fourth Report*”); 13 FCC Rcd 24284 (1998) (“*Fifth Report*”); 15 FCC Rcd 978 (2000) (“*Sixth Report*”); 16 FCC Rcd 6005 (2001) (“*Seventh Report*”); 17 FCC Rcd 1244 (2002) (“*Eighth Report*”); 17 FCC Rcd 26901 (2002) (“*Ninth Report*”); 19 FCC Rcd 1606 (2004) (“*Tenth Report*”); 20 FCC Rcd 2755 (2005) (“*Eleventh Report*”); 21 FCC Rcd 2503 (2006) (“*Twelfth Report*”); 24 FCC Rcd 542 (2009) (“*Thirteenth Report*”); 27 FCC Rcd 8610 (2012) (“*Fourteenth Report*”); 28 FCC Rcd 10496 (2013) (“*Fifteenth Report*”).

consumer choice and innovation. Informed by our market experiences and a long history with prior technology mandates, we lay this case out in greater detail in the attached business analysis. We hope this type of business case analysis – which we use as a matter of course in evaluating business ideas – will help inform the Commission’s approach.

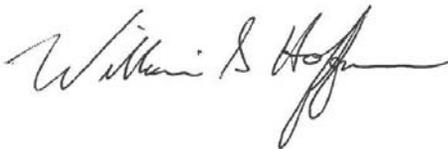
If at the end of the day there is some action still deemed necessary to move manufacturing and retail sales of new set-top boxes, Congress has the option to take that on directly with those in that line of business – for example, through the power of tax incentives and subsidies. We urge the Commission to choose not to redirect our industry’s marketplace innovation to test out yet another mandate that seeks to forge a path where consumers and consumer electronics companies have, by and large, decided not to go. The Commission should instead embrace and work to facilitate the rapid technology advancements the market is producing – ATSC 3.0, for starters – that, by all accounts, are a significant success story.

Please do not hesitate to contact us if we can be of any assistance in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Pat Esser". The signature is fluid and cursive, with the first name "Pat" being more prominent than the last name "Esser".

Pat Esser, President, Cox Communications, Inc.

A handwritten signature in black ink, appearing to read "William S. Hoffman". The signature is cursive and somewhat stylized, with the first name "William" and the last name "Hoffman" being clearly legible.

Bill Hoffman, President, Cox Media Group

## CASE: The FCC Proposal to Open-Source Pay TV Content

### Purported Goal

Chairman Wheeler has stated that consumers “should have more choices for innovative ways to access video content on the device or app they prefer.”<sup>1</sup> The NPRM further proclaims that multichannel video programming distributor (“MVPD”) subscribers “should be able to watch what they pay for wherever they want, however they want, and whenever they want, and pay less money to do so.”<sup>2</sup>

Largely relying on a misreading of Section 629 of the Communications Act, the NPRM would impose an entirely new framework that requires MVPDs to allow competitive devices and software open access to MVPD content and related information. The NPRM proposes rules that would require MVPDs to offer three flows of information (service discovery, entitlements, and content delivery) – and yet then directs the important specifics of such implementation to unspecified standards bodies.

If the NPRM proposal is adopted, manufacturers, retailers, and other companies unaffiliated with an MVPD theoretically would be able to design and build competitive navigation devices, either hardware, software, or a combination thereof with the interface of their choosing wrapped around the MVPD’s service, notwithstanding countless legal and practical limits on such an approach. According to the new theory proffered in the NPRM, Section 629 “cannot be satisfied ... unless companies unaffiliated with an MVPD are able to offer innovative user interfaces and functionality to consumers wishing to access” that MVPD’s programming.<sup>3</sup> In other words, it is not sufficient under Section 629, according to the proposal, for third party devices and applications to be able to access the MVPD service itself, as it is designed to be presented and, for many aspects, *required* to be presented according to terms negotiated with the providers of content; it must be pulled apart for third parties to displace its presentation with their own.

### NPRM Stakeholders

A number of different entities have vested interests in the NPRM’s proposal. The NPRM primarily focuses on a proposal advanced by Google and others in the working group of the Downloadable Security Technical Advisory Committee (“DSTAC”), which had been tasked by Congress only to focus on an alternative to the security layer for access to MVPD services.<sup>4</sup>

---

<sup>1</sup> Separate Statement of FCC Chairman Tom Wheeler, NPRM, 31 FCC Rcd at 1600.

<sup>2</sup> NPRM, 31 FCC Rcd at 1550-51 ¶ 11.

<sup>3</sup> *Id.* at 1558 ¶ 25.

<sup>4</sup> See STELA Reauthorization Act of 2014, Pub. L. No. 113-200, § 106, 128 Stat. 2059, 2063-64 (2014); FCC, DSTAC, <http://fcc.gov/dstac>; Downloadable Security Technical Advisory Committee Report, 30 FCC Rcd 15293, 15295-638

Google leads the “Consumer Video Choice Coalition,” a relatively small group dominated by Google’s trade associations and Google-supported public interest groups.<sup>5</sup> Google has a commanding share of the Internet advertising space with its ability to capture Internet search information; it wants a window into home video viewing activity and a shortcut to developing an advertising model around it. “Open-sourcing pay TV content” is a critical step for them, given that negotiating for content rights is a slow and expensive proposition.<sup>6</sup>

TiVo, historically the primary equipment manufacturer to avail itself of the CableCARD rules and to push for FCC efforts implementing Section 629, is notably a source for many of the leased set-top boxes MVPDs currently provide to customers and recently announced that it was prioritizing “North American MSO growth, International expansion and consumer innovation.”<sup>7</sup> TiVo is a member of the Consumer Video Choice Coalition and has met with FCC staff to discuss its competitive set-top box option.<sup>8</sup> Notably, TiVo’s offering and relationship with MVPDs is unlike the scenario contemplated in the NPRM in a number of key ways.<sup>9</sup>

---

(2015) (attached to *Media Bureau Seeks Comment on DSTAC Report*, Public Notice, 30 FCC Rcd 15293 (MB 2015)); *Media Bureau Seeks Comment on DSTAC Report*, Public Notice, 30 FCC Rcd 15293 (MB 2015).

<sup>5</sup> Members of the Coalition include Computer & Communications Industry Association, INCOMPAS, Ceton Corp., Common Cause, Consumer Action, Google Inc., Hauppauge, New America’s Open Technology Institute, Public Knowledge, Siliconust USA, Inc., TiVo, VIZIO, and Writers Guild of America, West. See Consumer Video Coalition, Members, <http://consumervideochoice.org/members> (last visited Apr. 17, 2016).

<sup>6</sup> See The FCC’s Googleopoly Gatekeeper Navigation Device Set-up, Scott Cleland Precursor Blog, Feb. 17, 2016, <http://precursorblog.com/?q=content/fcc%E2%80%99s-googleopoly-gatekeeper-navigation-device-set>, referencing *Viacom v. YouTube Statement of Undisputed Facts #161 (Viacom Int’l, Inc. v. YouTube, Inc.*, Case No. 1:07-CV-02103 (S.D.N.Y. Mar. 18, 2010)): “On June 8, 2006, Google senior vice president Jonathan Rosenberg, Google Senior Vice President of Product Management, emailed Google CEO Eric Schmidt and Google co-founders Larry Page and Sergey Brin a Google Video presentation that stated the following: ‘Pressure premium content providers to change their model towards free[;] Adopt ‘or else’ stance re prosecution of copyright infringement elsewhere[;] Set up ‘play first, deal later’ around ‘hot content.’” The presentation also stated that “[w]e may be able to coax or force access to viral premium content,” noting that Google Video could “[t]hreaten a change in copyright policy” and “use threat to get deal sign-up.””

<sup>7</sup> See, e.g., Jeff Baumgartner, *TiVo Cuts 50 Jobs Amid Restructuring: Resets Focus on North American MSO Growth, International Expansion*, Multichannel News (Feb. 29, 2016), <http://www.multichannel.com/news/content/tivo-cuts-50-jobs-amid-restructuring/402924>.

<sup>8</sup> See, e.g., Letter from Devendra T. Kumar, Attorney for TiVo, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-261 and 15-64 (Jan. 13, 2016).

<sup>9</sup> The experience with TiVo does not offer an accurate predictor for how the process envisioned by the NPRM can work. First, TiVo is a provider of set-top boxes for several multiple system operators (“MSOs”), which have worked closely with TiVo with the goals of increasing the functionality of its products and ensuring the TiVo boxes will present MVPD services with the same quality of service and without interference or alteration. With respect to its retail set-top boxes, TiVo relies on the hardware-based CableCARD regime, which was jointly developed by the cable and consumer electronics industries and similarly is designed to preserve the MVPD service as presented and with the same quality. Although the NPRM says that the CableCARD standard “largely appears to align with our proposed rules,” NPRM, 31 FCC Rcd at 1583 ¶ 81, CableCARD provides certain protections that are not assured under the new regime the NPRM contemplates.

MVPDs and content providers, including Cox, oppose the NPRM’s proposal. Such companies have appeared before the FCC separately and also as part of the “Future of TV Coalition,” a broad coalition of video distributors, minority groups, and content creators.<sup>10</sup>

Companies with existing over-the-top offerings, such as Netflix, Apple, and Roku, either have not weighed in on the proceeding, or submitted neutral filings.<sup>11</sup>

While this is the landscape at this particular point in time, in this dynamic industry, it is nearly impossible to predict what new technologies and business models companies will offer just a few years from now.<sup>12</sup>

### **Regulatory Backdrop of FCC’s “Trial-by-Error” Attempts to Boost a Retail Set-Top Box Market**

Artificial government efforts to boost a retail set-top-box market have been costly to our customers, while voluntary arrangements between CCI and manufacturers have created direct consumer benefits. More specifically, over the past 15 years, various requirements imposed by the FCC in the name of meeting its charge under Section 629 have caused CCI to spend money it could have used to benefit subscribers and TV viewers in countless other ways, and have diverted key resources and delayed the rollout of significant service improvements. As a prime example, our recent ability to offer our ultra-fast Gigablast Internet service is due almost solely to capacity recaptured by our move to all-digital platforms, which, in turn, was due to our freedom – at last – to avoid the wasteful, unnecessary requirements of the “integration ban.” CCI’s compliance with this rule came at a cost of \$160 million, money that could have been spent toward driving broadband deployment and service improvements.<sup>13</sup> With the flexibility

---

<sup>10</sup> The Future of TV Coalition, Coalition Members, <http://futureoftv.com/who-we-are> (last visited Apr. 17, 2016).

<sup>11</sup> See, e.g., *Ex Parte* Letter from Trey Hanbury, Counsel to Roku, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 14-261 and 15-64, at 2 (Dec. 14, 2015) (urging the Commission to be “wary of propounding new regulatory mandates for set-top boxes that would explicitly or implicitly lock in any particular technical standard or require specific content-delivery methods”). When asked in a recent interview about whether the proposal would open up opportunities or be meaningful to the company, Netflix CEO & Co-Founder Reed Hastings opined, “I don’t think so.” Netflix, *Netflix Q1 2016 Earnings Interview*, YouTube (Apr. 18, 2016, 18:20-19:04), <https://youtu.be/5wAllVtgBz0>.

<sup>12</sup> See, e.g., Dissenting Statement of Commissioner Ajit Pai (“Just think about what three years means in the dynamic video marketplace. Thirty-six months ago, there was no such thing as the Google Chromecast or Amazon Fire TV Stick. There’s no telling what further innovation will occur over the course of the next three years, but we do know it’ll happen, and fast.”).

<sup>13</sup> CCI objected to, and urged the Commission (and Congress) to repeal, the integration ban (aka the CableCARD “common reliance” mandate) because of the huge expense of including unnecessary hardware in every box. Today, there are only 60,000 CableCARDS being utilized by CCI customers to connect retail devices, primarily TiVos, to our service. We have 4.5 million set-top boxes that customers lease from us that we were required to purchase with the added cost of a CableCARD. The CableCARD technology was useful to CCI to support certain business needs in using some of the boxes it sourced across network platforms; we did not, and do not, therefore, need to be compelled to support CableCARDS, as it is in our own interest to do so with so many deployed in our own

that rule's repeal affords us, we have now been able to do a wide-scale transition to all-digital technology, where analog customers can make an easy transition to digital services by leasing boxes with HD capability for less than \$3 per month and accessing a guide, new channels provided only in digital, and more. In reclaiming 40 percent of our downstream capacity with this digital transition, we can offer higher Internet speeds.

The unnecessary expense we incurred in complying with the integration ban is in stark contrast to CCI's voluntary support for the consumer electronics industry's efforts to achieve competitive navigation. We consistently have supported interoperable activities and unique retail device implementations – CCI has a history of working closely with consumer electronics companies beyond its own equipment vendors to develop and deploy improved video technology. We supported TiVo above and beyond any requirements by voluntarily entering into an agreement to provide delivery via IP access to our VOD library on retail-purchased TiVo DVRs. Ensuring the necessary compatibility to showcase our VOD library on TiVo's DVR cost us \$17 million – in a single year. This investment was worthwhile to us because we knew it would be a win-win-win solution for TiVo, CCI, and consumers; unlike the scenario contemplated in the NPRM, we were able to work very closely with TiVo and develop confidence that they would protect our customers' privacy and our partners' content through their end-to-end hardware and software control. We also have worked with Moxi, Funai, LG, Panasonic, Pioneer, and Samsung as they explored retail set-top box business models. However, in each case, the reality is that neither manufacturers nor consumers prioritized this effort, with the market moving more to new technologies such as Smart TVs.

CCI has most recently spent approximately \$10 million developing a system to comply with the mandate for an IP output in every HD set-top box, designed to create an environment where any IP-connected retail device could supplant the need for a leased set-top box on additional TV outlets throughout the home.<sup>14</sup> This is an effort that industry largely has endorsed, and continued to move towards even as the underlying "Plug and Play" order supporting the mandate was struck down. While the technology is there for cable to provide live and recorded content via an IP output to any IP-connected device, implementations to comply with the IP output mandate have not even been given the chance to develop. Now the Commission would have us *again* redirect and stretch our resources to comply with a new proposal to "implement Section 629."

---

architecture. The inflexible mandate, however, was particularly wasteful without any correlation to a service benefit. Tru2Way was yet another technology mandate designed to entice consumer electronics manufacturers to develop and sell set-top boxes at retail, this time under the theory that where CableCARD-reliant devices were lacking two-way capacity, Tru2Way would provide a path to more compelling, two-way service offerings. CCI supported the Tru2Way (i.e., OCAP) software standard and uses it today for its own purposes in well over 2 million set-top boxes. However, with the mandate in place, equipment manufacturers then abandoned plans to build Tru2Way devices. CCI spent \$7-\$8 per box, totaling approximately \$15 million for OCAP licenses.

<sup>14</sup> This requirement is a modified version of the 1394 output that was mandated on millions of set-top boxes even when users in our environment likely never exceeded a few dozen. We applaud the Commission for ultimately recognizing that the requirement was rendered obsolete, but CCI bore a real cost – roughly \$8 million – for an

## **Market Assessment and Existing Offerings**

CCI and CMG know first-hand about the costs and challenges of moving as rapidly as possible to develop and deploy new technologies and business models: This is what we are doing all day, every day. At both CCI and CMG, we are proud to be meeting our subscribers' voracious demand for video that is neither time- nor location-constrained. And we know we are not alone among MVPDs and programmers in facilitating our customers' access to the new Golden Age of Television – consumers have a wide choice of providers, including satellite and telco companies, all with different TV interfaces.<sup>15</sup>

CCI's rollout of Contour with its in-home apps, and TV Everywhere for apps authorizing online viewing inside and outside of the home, has been based on ensuring that we could provide Cox TV anytime, anywhere, on any device *without* compromising the integrity of our video feed or programming agreements. This is no easy feat. Yet, we now offer the full complement of our video service for in-home viewing on mobile devices and over 100 channels of cable content that can be authenticated for online viewing, approximately half of which can be live streamed. Our data shows that, in 2015, 35 percent of CCI's video customers used programmer apps and 19 percent of customers logged into our app to view multichannel programming online.

Having spent more than \$70 million over the past eight years to develop and deploy third-party apps for Cox TV, we are extremely proud of what CCI offers and of our ability to design our offerings in a way that provides the highest quality of service to our subscribers and maintains the sanctity of our programmer arrangements. If a CCI customer wants to binge watch "House Hunters International" on his tablet while drinking lattes at a coffee shop on a Saturday morning in Fairfax, Virginia, he can log in to TV Everywhere, select CCI as his provider, and have his usage authenticated with his CCI credentials. He will then be behind the paywall and able to access any episodes available for download.

In Las Vegas, a different CCI customer could choose to have her Saturday morning coffee at home and watch "House Hunters International" on a Roku box, using her CCI credentials to authenticate service. The video viewing experience she will get with her Roku, when authenticated through TV Everywhere, is far more robust than a non-subscriber would get with the same Roku due to the difference in rights we have paid to secure from the programmer. That same customer could subscribe to CCI's Contour service, and along with access to all CCI services on the primary outlet, also access the same services – live, recorded, or on-demand, around the home on mobile devices so as not to be tied to the TV set.

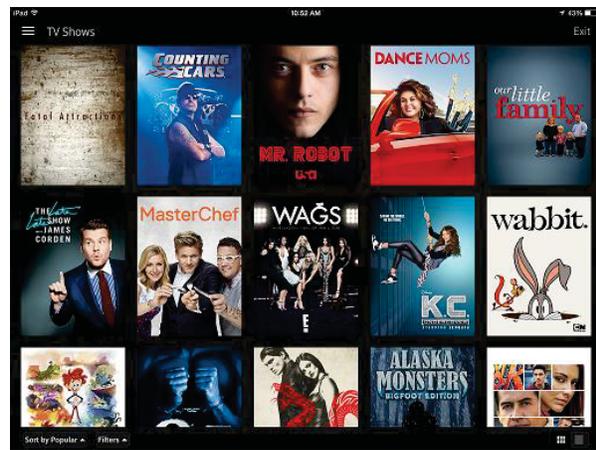
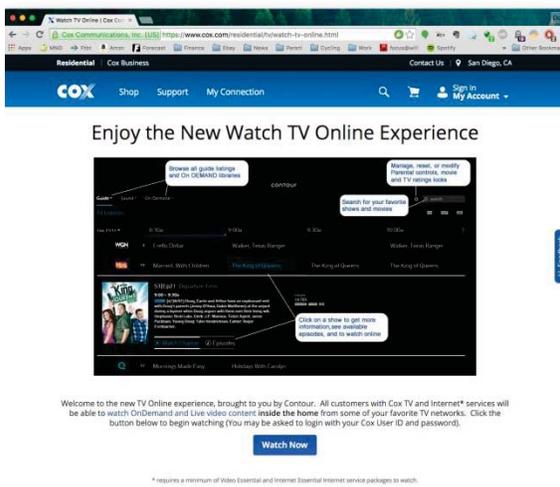
---

output with near-zero customer utilization.

<sup>15</sup> Indeed, just two days ago, Comcast and Samsung announced a joint Smart TV effort that would allow subscriber access to Comcast Xfinity content without a Comcast-leased set-top box. Press Release, *Comcast Launches Xfinity TV Partner Program; Samsung First TV Partner to Join*, Comcast (Apr. 20, 2016), <http://corporate.comcast.com/news-information/news-feed/comcast-launches-xfinity-tv-partner-program-samsung-first-tv-partner-to-join>; see also Comments of Comcast Corporation, MB Docket 15-64, at 6-9 (Oct. 8, 2015) (explaining that subscribers can use Xfinity apps to access their MVPD service across a plethora of devices).

Likewise, CMG’s commitment to new technologies, including work on the voluntary ATSC 3.0 standard, will mean that a family in Atlanta (or any other CMG market) can watch Saturday morning TV using an OTA tuner or a currently available set-top box to receive a high-quality picture, as well as content and advertising that, because it is fully under CMG’s control, complies with the FCC’s children’s programming commercial limits. The Atlanta family can then watch the local Channel 2 newscast, supported by local advertisements that come at natural breaks in the telecast and undisturbed by banner ads or inappropriate ad-insertions. When home viewing is cut short, WSB-TV viewers (and viewers similarly in all CMG markets) can turn to the WSB weather or news apps or watch local WSB newscasts through the NewsOn app.

### Not Your Grandmother’s Black Phone



### TV Everywhere on the Web



WSB-TV Weather App

### Contour App on the iPad



WSB-TV News on NewsOn App

**Cost-Benefit Analysis Finding: The NPRM’s Proposal Will Impose Real Harms Throughout the Video Distribution Marketplace, With Little or No Corresponding Consumer Benefit**

CCI and CMG have always embraced and promoted dynamic changes in the marketplace, but the NPRM’s proposal is not “disruptive” as a term of art – it is *literally* disruptive to a highly functioning, inherently transformative, multi-layered, multi-party marketplace. Years of careful negotiations would be undone; substantial time and dollars would be diverted to another regulatory attempt to create a market niche out of whole cloth. We discuss below the real marketplace harms to advertising, the customer value proposition (including quality of service and content security), programmers’ rights and copyright, customer service, and the pro-consumer leased device model.

**A. Advertising Is At the Core of the Video Business and Cannot Be a Regulatory Afterthought**

Advertising significantly reduces the costs consumers otherwise might have to pay for video programming; selling ad inventory in programs is critical to funding the production and acquisition of content. It is the chief sustaining revenue stream of CMG and the local television business, as well as a vital revenue source for cable.<sup>16</sup> The flaws in the NPRM’s proposal with respect to protecting this model should be patently clear, yet the NPRM claims that the Commission lacks “evidence that regulations are needed to address concerns raised by MVPDs and content providers that competitive navigation solutions will disrupt elements of service presentation ... replace or alter advertising, or improperly manipulate content.”<sup>17</sup>

The ability of Super Brand stations like CMG’s to offer exclusive advertising during their programs is at the core of the local TV business model. Looking forward, CMG, through its Pearl TV membership, is heavily investing in new technologies that will deliver advertisements that are more relevant to consumers, further enhancing the value of the advertising opportunities that CMG provides. To the extent the NPRM would allow (or provide no means to prevent) unaffiliated manufacturers and software developers to insert ads (either in the programming itself or on search or viewing software screens) or offer program viewing software that permits ad skipping, the Commission would be letting these entities significantly devalue the platform that CMG’s stations offer to advertisers, leading to decreased revenues. As revenues decline, CMG’s stations would be forced to reduce investment in quality local programming. The potential of a vicious cycle of diminished advertising revenue leading to reductions in local service makes this a paramount issue for CMG, its viewers, and the public interest generally. Indeed, given the potential threat to the current advertising model, it is no exaggeration to say that the FCC’s proposal here may pose an existential threat to CMG.

---

<sup>16</sup> CCI had approximately \$380 million in ad sales on cable networks and other digital media for its clients in 2015.

<sup>17</sup> NPRM, 31 FCC Rcd at 1582-83 ¶ 80.

Advertising also is a key part of CCI's business. CCI sells commercial time on linear TV programs, generally arising from its cable programming carriage agreements. MVPDs (typically through such standard commercial agreements) reliably pass through TV signals without danger of alteration in advertising, whereas a manufacturer or developer could potentially do a damaging ad overlay. For example, a device or software could interfere with embedded advertising by layering in its own pre-roll, wraparound, banner ads. The programmers with whom we have arrangements for carriage likely would find their ability to monetize content diminished, in turn affecting our ability to sell advertising to them. The FCC's proposal would eliminate the contractual tools necessary for programmers to enforce prohibitions against such interference, leaving programmers and MVPDs without recourse to address these serious concerns.

The cable advertising model focused on local advertising relies on network ad insertion capabilities that occur principally at local headends. CCI invests more than \$10 million annually to maintain and upgrade headends to improve video quality for on-air advertisements and maintain compatibility with improvements in set-top box infrastructure (e.g., expanding HD content capabilities). As television advertising products evolve quickly in an extremely competitive environment, new product standards require cable companies to invest in addressable (i.e., targeted) and non-linear ads. In many cases, the technical architecture of these products relies on data and applications that come from consumer set-top boxes. The ability to bring this additional value to advertising clients is diluted where the content is divorced from the service, as the NPRM proposes.

#### **B. MVPD Quality of Service and Content Security Cannot Be Assured Under the NPRM's Proposal, Presenting a Direct Threat to the Cable Consumer Value Proposition as Well as Programmers**

We first note the misnomer of "parity" in the NPRM.<sup>18</sup> *There is no parity in this proposal.* While every MVPD would have the requirement to support implementations, there is no mandated reciprocity that all of the manufacturers or developers of said solutions would have to support our applications. Rather than a carefully considered level playing field, the Commission would shunt MVPDs and content companies with proven marketplace effectiveness to the side and instead choose artificial new winners – with little experience or even demonstrated interest in the pay-TV space. Indeed, the NPRM's proposal directly threatens foundational elements of the cable model, particularly quality of service and content security. While the Commission's efforts to facilitate over-the-top ("OTT") video distribution vehicles are commendable in general, the agency must understand that OTT is a different model altogether for programming rights and content protection, with different consumer expectations, and it cannot simply be layered onto the cable architecture. Using Section 629 to promote pure OTT offerings that disaggregate MVPD services is misplaced.

In addition to differing regulatory responsibilities (e.g., EAS, accessibility, must-carry), the

---

<sup>18</sup> NPRM, 31 FCC Rcd at 1574 ¶¶ 63-69.

Communications Act definition of a “cable system,” a set of closed transmission paths, is central to our negotiations and agreements. Our contracts with programmers, which can easily run a decade, impose technical requirements on CCI, which could be breached by third-party devices under this proposal. For example, our contracts ensure quality of service for both linear and video-on-demand content, current transmission methods and emerging HD and 4K streams. They also require CCI to enable particular functionality for video-on-demand. Each of our programmers (like CMG stations on other cable systems) depends on its network’s placement in the channel lineup so viewers can find content in the same place day in and day out, and flip to similar interests nearby grouped together. We have seen the direct results of successful neighborhooding on emerging channels and how it can serve to foster independent voices.<sup>19</sup> In our partners’ eyes, part of CCI’s role is to execute part of a rebrand by displaying the correct logos and providing the correct descriptions in channel guides and on screen. Likewise, CCI depends on continuous, two-way communication to and from our set-top boxes to ensure we are meeting these regulatory and business obligations. The proposal would turn our two-way communication into a one-way flow, to the detriment of our consumers. Our ability to provide a secured system is the incentive to produce and provide for distribution of premium content. The NPRM’s proposal to “open-source pay-TV content” completely upends established approaches to copyright, content security, and quality of service assurances.

As a broadcaster and producer of content, CMG also has a high level of interest in quality of service and content security. We must preserve the copyright protections for the content we distribute, particularly network and syndicated programming. To that end, we must also reconcile our OTA signal and TV Everywhere access. The reality is that CMG’s redistribution of network and syndicated content depends entirely on our ability to control retransmission of the programming by MVPDs. To the extent the NPRM proposes a set-top box model that makes it impossible for us to guarantee that our programming suppliers’ copyrights will be respected, then it will become virtually impossible to negotiate retransmission consent contracts with MVPDs. And, absent a functional MVPD distribution model for local TV stations, CMG’s programming suppliers are likely to seek new outlets for their programming. Nothing in the Commission’s proposal gives CMG confidence that these core components of our existing MVPD distribution would be protected in the disaggregated world of the NPRM. This problem must be solved, or the FCC’s proposal will threaten the historic, decades-long network/affiliate model for the distribution of national programming to localities nationwide.

Thus, there will be costly uncertainty and significant competitive imbalances if we are forced to open up our services while others, such as Netflix, Amazon, or Apple TV, can remain wrapped in their proprietary apps and devices. While CCI wrestles with the cost of content on our balance sheet, companies such as Google would get a free ride. They would have access to our product

---

<sup>19</sup> Indeed, CCI must comply with several neighboring restrictions to protect consumers and network brands alike. For example, family-friendly networks prohibit being carried in the same “neighborhood” as adult or mature content. Similarly, several Hispanic channels, which carry primarily Spanish-language programming, require that they be grouped in the same neighborhood to allow consumers to easily find relevant cultural and language programming and to further develop their audiences.

without paying for it – in fact, there is nothing that would stop them from charging consumers for the use of their device or software, effectively causing consumers to pay twice, and further enhancing these companies’ profits. Frankly, it is unclear if third parties that “certify” they are abiding by the rules will deliver a complete video experience that serves all consumers. For example, CCI’s user interfaces ensure that video description and closed captioning reach consumers who depend on these aspects of our service to engage in video’s collective cultural experience. After all, if lawmakers and regulators believed that video-related accessibility obligations on manufacturers were sufficient, then many of the Part 79 accessibility rules<sup>20</sup> would be superfluous. Surely, they are not.

### **C. The NPRM Would Abandon Functioning, Market-Driven Mechanisms That Allow Programmers to Continue Investing in High-Quality Content That Benefits Consumers**

High-quality content is costly to produce and acquire, and it is the confidence regarding existing business models and standards of content security that allows producers of high value content to use traditional and new distribution mechanisms. If “unlocked” boxes or software cannot adequately protect content security, content owners will move to more secure platforms, entirely disrupting consumer expectations and overturning existing models that otherwise would succeed in the marketplace. With adequate security, consumers will continue to have a dazzling array of programming options available on multiple platforms. The NPRM’s proposal does not ensure adequate security or allow for private contractual negotiations that would assuage programmers’ concerns.

Programmers and content owners rely on negotiated licensing agreements, founded in copyright law, to protect the value of their works. CMG relies on these agreements to protect our investment in our brand and the content it represents. As a distributor, CCI understands and respects the business decisions behind programmers’ specifications regarding distribution (e.g., where, how, and on what devices programming can be shown, such as offering TV rights to one distributor and digital or mobile rights to another). We have experience accommodating these arrangements, and we do not abrogate contracts to obtain rights for which we have not fairly negotiated. The NPRM, however, suggests that negotiated restrictions would be a thing of the past – at least for the companies taking advantage of MVPD services to build their own video distribution models, without paying any of the same costs, or entering into any of the same contractual terms. Both MVPDs and broadcasters would be competitively disadvantaged by this development. It also is not clear how CCI can ensure compliance with the requirements in our existing programming agreements to protect the integrity of the delivery to the consumer, given the addition of unknown third parties to the distribution chain. While we can ensure that content leaves CCI’s system with high quality, when that content ultimately is displayed through a third-party device through which we have no means of guaranteeing quality of service, we are in danger of not meeting our obligations. On the flip side, and – as

---

<sup>20</sup> See, e.g., 47 C.F.R. §§ 79.108, 79.109 (imposing responsibility for accessibility of apparatus and navigation devices on both manufacturers and MVPDs).

noted above – absent content security, broadcasters like CMG may have great difficulty entering into retransmission consent agreements with MVPDs.

#### **D. MVPD Subscribers Ultimately Would Bear the Brunt of Costs Associated With the NPRM’s Proposal**

In addition to a reduction in the availability of high-quality programming and a decrease in quality of service, MVPD subscribers would incur costs associated with customer service confusion when MVPDs are called upon to service third-party devices and with increased power bills driven by energy usage of devices not subject to the MVPDs’ voluntary agreement on energy efficiency. Subscribers also would suffer from the delays or – worse yet – absence of network and service upgrades caused by the diversion of finite personnel and monetary resources toward compliance with the new rules.

First, sub-par customer service from a manufacturer or developer would be challenging for CCI to cure, and likely quite frustrating to the subscriber. At CCI, we take to heart our commitment to customer service. The NPRM’s proposal would strip us of our ability to ensure the highest levels – or, frankly, even a minimum level – of customer service. We are a trusted provider and the face to the customer, the one to answer the phone or send a truck, and enter a customer’s home – the ultimate act of trust – when they have a problem. Throwing a disaggregated service to a manufacturer or software developer with no connection to the consumer is not consumer-oriented, and it could cost us countless resources we may have no way to recoup. Ultimately, though, our subscribers would be the ones most harmed by this aspect of the FCC’s proposal.

CCI’s experience in delivering Internet service is instructive. Users can bring their own Wi-Fi router to CCI’s Internet service – and CCI receives many, many calls related to these Wi-Fi devices, even though CCI likely does not deliver that aspect of the service. When a problem arises, as we troubleshoot with our customers, most often the issue is the router (with no specific quality levels) purchased by the customer at retail. When there is a third-party wireless router, we expend extra resources to isolate the issue, forced to balance between blaming an unrelated party (the actual source of the problem) or doing whatever possible to help our customer, even when the issue is not under our control. Presumably recognizing that leased equipment would be far simpler – not to mention that our gateway Wi-Fi experience is first in class – customers are shifting from purchase to rental, and the “provide your own” share remains relatively low. Our consumers are picking the better quality experience, which is the CCI experience. This is reducing customer service calls and resources because we can identify the cause of problems more easily. It also is fully consistent with our understanding that the majority of MVPD subscribers find the leased set-top box model preferable based on cost.

Despite Cox Enterprises’ diversification of business lines, we have never been an equipment company. We lease devices because it is an affordable option for most consumers, and our continuing support never renders them obsolete. While the NPRM implies that consumers lack information regarding leased set-top boxes, all of our data and experience show that many

consumers value the quality, simplicity, and convenience of renting equipment. For example, even though there is a robust retail market and standards-based interoperability for broadband modems and gateways, more than 90 percent of our new customers choose to rent these devices from CCI. Among other benefits, the leased model allows our customers to get newer boxes far more quickly with less additional cost than if they invested in retail devices.<sup>21</sup>

Second, the NPRM proposal may result in higher power bills for CCI subscribers. As a complement to the company-wide effort “Cox Conserves,”<sup>22</sup> CCI worked with environmental groups and NCTA to find ways to reduce set-top box power consumption and increase our boxes’ energy efficiency.<sup>23</sup> Newer generations of CCI’s set-top boxes are gaining in energy efficiency, to the benefit of both our environment and our customers’ energy bills. The current path to a boxless future promises further reductions. The NPRM’s proposal would undermine this bright future by mandating technology that will force a drastic redesign of our video distribution systems, including the likely introduction of a new piece of power-hungry equipment in our customers’ homes.

Finally, while details in the NPRM are sparse, we know that there is no secure solution to parsing out and sharing the service elements designated in the proposal without creating a new delivery architecture and new equipment in customer homes. In the last 10 years, CCI has invested more than \$15 billion in its communities through infrastructure upgrades to deliver reliable, secure video, phone and high-speed Internet service to homes and businesses in the company’s service area. Layering on a new delivery network and deploying new equipment with it comes at a significant cost that will be borne entirely by customers, particularly with no related offset in savings or drivers of business, as was the case with our “Go All Digital” initiative and the ability to expand broadband to 1Gig speeds. We also note from past experience that the competitive retail side of the solution likely cannot be implemented in a timely, cost-effective manner by manufacturers and software developers.

---

<sup>21</sup> In the early days of HD, CCI offered set-top boxes for purchase to consumers – but demand was weak, and we ultimately abandoned this effort.

<sup>22</sup> Through its Cox Conserves initiative, within the past several months Cox (1) signed onto the American Business Act on Climate Pledge, and (2) participated in the White House Water Summit held in conjunction with the United Nations World Water Day. See <http://coxenterprises.mediaroom.com/newsreleases?s=26244&category=533>

<sup>23</sup> See, e.g., Comments of the Natural Resources Defense Council, MB Docket No. 16-42, CS Docket No. 97-80 (Apr. 13, 2016) (noting the voluntary agreement reached by industry and environmental groups to increase energy efficiency and reduce power consumption in set-top boxes); Amendment No. 1 to the Voluntary Agreement for Ongoing Improvement to the Energy Efficiency of Set-Top Boxes, Effective Jan. 1, 2014 (Dec. 19, 2013), <http://www.ncta.com/energyagreement>. Acknowledging the market-based, voluntary solution reached by stakeholders, the Department of Energy withdrew its pending rulemaking on set-top box energy standards in 2013. Department of Energy, *Energy Conservation Program: Proposed Determination of Set-Top Boxes and Network Equipment as a Covered Consumer Product*, Proposed Determination and Withdrawal, Docket No. EERE-2010-BT-DET-0040 79 Fed. Reg. 79629 (pub. Dec. 31, 2013).

## **Conclusion and Recommendation**

The NPRM feels like a bad sequel to a bad movie. We have already seen what happens when our resources are stretched and we need to invest in order to comply with needless regulatory requirements while separately investing, so as not to fall behind, in the technology and business models that we know consumers will demand. In this situation previously, our service apps and TV Everywhere – the market-driven path – thrived. CableCARD and Tru2Way did not.<sup>24</sup> Here, history tells us the answer is not the proposal in the NPRM, which we know will result in wasteful investment solely to meet unnecessary government mandates.

Put simply, architecting:

- a whole new system
- to unbundle our service from our interface
- to test out a new theory that enough customers will make a significant upfront spend
- to buy a set top-box at retail

is not borne out by what we are seeing in the market. We see a completely different marketplace than the one the NPRM describes. Consumers have a wide choice of providers, including satellite and telco companies, all with different TV interfaces, and we see consumers looking primarily for mobility and downstream devices/locations, not a new set-top box solution. Now we are looking to the future of providing our multichannel programming services without a set-top box, bringing to bear the same type of app technology that has proven so effective with mobile devices. While the NPRM purports to “unlock the box” by proposing to anchor the industry in a set-top box environment, we envision instead an entirely “boxless” future that is consistent with evolving consumer demands and viewing habits.

The Commission must understand that its lofty ideas to tweak the marketplace come with real, substantial costs, and it should reconsider whether this choice bears any relation to actual consumer demand. We know that it is better for companies to work together voluntarily, free of regulatory strings, to develop the best new technology and business models that work for consumers. The Commission thus should reject the NPRM’s proposal and allow the video marketplace to continue to flourish, absent regulatory constraint.

---

<sup>24</sup> CCI and others stood ready to support manufacturers who sought to make compatible products, but the market never developed.