

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Expanding Consumers' Video Navigation Choices)	MB Docket No. 16-42
)	
Commercial Availability of Navigation Devices)	CS Docket No. 97-80

**REPLY COMMENTS OF MT. HOOD CABLE REGULATORY
COMMISSION, MONTGOMERY AND ANNE ARUNDEL
COUNTIES, MARYLAND**

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I. INTRODUCTION

The Mt. Hood Cable Regulatory Commission,¹ Montgomery² and Anne Arundel³ Counties, Maryland, (collectively “Local Coalition”) submit these reply comments in response to

¹ The Mt. Hood Cable Regulatory Commission (“MHCRC”) was created in 1992 when the City of Portland, Oregon, and Multnomah County and the cities of Gresham, Troutdale, Fairview, and Wood Village, Oregon, agreed to consolidate two already-existent (since 1982) cable regulatory programs and staffing. The MHCRC advocates for and protects the public interest in the regulation and development of cable communications systems, provides consumer protection, and facilitates the planning and implementation of community uses of cable communications technologies that make use of the public rights-of-way. The MHCRC comprises the majority of the Portland media market and oversees and supports two not-for-profit PEG organizations in Multnomah County, Oregon.

² Montgomery County acts as the franchise administrator for over a quarter of million cable subscribers served by three wireline cable service providers within Montgomery County – Comcast, RCN and Verizon. In addition to serving as the Local Franchising Authority for the County, pursuant to contracts between the County and 18 municipalities, the County has also been designated by these municipalities to administer and manage each of their cable franchises on their behalf. These municipalities are Chevy Chase Village, Chevy Chase Village Section 3, Chevy Chase Village Section 5, City of Rockville, City of Takoma Park, Town of Barnesville, Town of Brookeville, Town of Chevy Chase, Town of Chevy Chase View, Town of Garrett Park, Town of Glen Echo, Town of Kensington, Town of Laytonsville, Town of Poolesville, Town of Somerset, Village of Martin's Addition, Village of North Chevy Chase, and Washington Grove. Commenter Montgomery County has a long history of seeking to promote a competitive marketplace.

³ Anne Arundel County believes itself to be the most connected county in the US. The County acts as the franchise administrator for over one-half million people served by three wireline cable service providers within Anne Arundel County – Comcast, Verizon FiOS and Anne Arundel Cable d.b.a. Broadstripe.

the Notice of Proposed Rulemaking (“NPRM”), released March 17, 2016, 2016 in the above-entitled proceeding.⁴

The Local Coalition files these reply comments to add their voice to the chorus of commenters⁵ who agree with the Commission’s tentative conclusions that

1. Section 629 both authorizes and obligates the Commission to assure a commercial market for devices that can access multichannel video programming and other services offered over multichannel video programming systems.⁶
2. The Commission’s finding that consumers have few alternatives to leasing set-top boxes from anyone other than their MVPD⁷ is firmly grounded in the record.⁸

⁴ *Expanding Consumers’ Video Navigation Choices; Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking, MB Docket No. 16-42, 18 Fed. Reg. 14033 (Mar. 16, 2016) (“NPRM”); *Media Bureau Announces Comment and Reply Deadlines for Video Navigation Choices NPRM and Establishes Schedule for Ex Parte Meetings*, Public Notice, MB Docket No. 16-42 (Mar. 17, 2016) (extending comment deadline by seven days to April 22, 2016).

⁵ See e.g., “As the President’s principal advisor for telecommunications and information policy, the National Telecommunications and Information Administration (NTIA), on behalf of the Obama Administration, applauds the Commission’s decision, pursuant to Section 629 of the Communications Act, to move forward with a proposal to increase competition and expand consumer choice in the market for multichannel video navigation devices.” Comments of the National Telecommunications and Information Administration (filed Apr. 14, 2016) at 1 (“NTIA Comments”). “Amazon commends the Commission for proposing a new approach to deliver for consumers the competition for navigation devices that Congress envisioned when it adopted Section 629 of the Communications Act.” Comments of Amazon (Filed Apr. 22, 2016) at 1. (“Amazon Comments”); “TiVo Inc. (“TiVo”) strongly supports the Commission’s proposed rules, which will help establish a long-awaited successor to CableCARD to assure the competitive availability of retail navigation devices for the benefit of consumers in accordance with Section 629 of the Communications Act.” Comments of TiVo, Inc. at 1 (filed Apr. 22, 2016) (“TiVo Comments”). In addition to the Comments filed in this proceeding, as TiVo points out at p.8, fn 14 that the Commission has enjoyed broad support from the editorial boards of national newspapers. “The Editorial Board, N.Y. Times, *The F.C.C. Gets Ready to Unlock the Cable Box*, Feb. 8, 2016, at <http://www.nytimes.com/2016/02/08/opinion/the-fcc-gets-ready-to-unlockthe-cable-box.html>; The Editorial Board, Boston Globe, *FCC should unlock savings for cable consumers*, Feb. 10, 2016, at <https://www.bostonglobe.com/opinion/editorials/2016/02/09/fcc-should-unlocksavings-for-cable-consumers/2msnvpfsddJbybiYiX9u2N/story.html>; The Editorial Board, The Chicago Tribune, *Imagine your viewing options if the FCC unlocks the cable box*, Feb. 15, 2016, at <http://www.chicagotribune.com/news/opinion/editorials/ct-cable-fcc-box-netflixespn-edit-0216-jm-20160215-story.html>; The Editorial Board, Los Angeles Times, *Thinking outside the cable box*, Jan. 28, 2016, at <http://www.latimes.com/opinion/editorials/la-ed-cable-boxes-20160128-story.html>; The Editorial Board, USA Today, *Let TV viewers buy cable boxes*, Feb. 17, 2016, at <http://www.usatoday.com/story/opinion/2016/02/17/cable-tv-settop-box-fcc-tom-wheeler-editorials-debates/80474618/> (“Let TV viewers buy cable boxes”); The Editorial Board, Bloomberg View, *Cheaper Cable TV Starts With a Better Box*, April 20, 2016, at <http://www.bloombergtv.com/articles/2016-04-20/cheaper-cabletv-starts-with-a-better-box>.

⁶ NPRM at ¶1, 2, 21- 24. See Comments of Public Knowledge (filed Apr. 22, 2016) at p. 4-10 (“Public Knowledge Comments”).

The Commission's tentative conclusion that the marketplace for navigation devices is not competitive⁹ is sustained by the record and there is therefore a predicate for rules.¹⁰ In 2016, consumers in at least one Local Coalition community will pay \$8.45 to \$15.95 per television for equipment. More importantly, in the four years since the Local Coalition last requested that the Commission allow consumers to purchase navigation device equipment from MVPDs, a consumer with one television will have spent \$111.60 to \$321.60 renting an SD converter box, \$460.80 to \$575.76 renting an HD converter box, and \$861.60 to \$1,703.52 renting an HD-DVR converter box. A consumer with 3 HDTVs and DVR service could have spent as much as \$5,110.56 renting equipment in the past four years.¹¹

3. Documented research reveals that a competitive marketplace for navigation devices today has the potential to benefit consumers¹² and is supported by service and equipment rate data from local communities. Equipment charges may represent 16% to 75% of "skinny cable" bundles, 14% of the most common high definition packages, and up 93% for a multi-room HD package. The Local Coalition supports the Commission's proposed revisions to 47 C.F.R. §76.1206, requiring navigation device prices to be listed separately on consumer bills and recommends that the Commission also require such information to be posted on annual rate cards made available in a clear and conspicuous manner on MVPD websites where service package pricing data is also made available.¹³ Conflating service and equipment thwarts both Congressional and Commission intent to allow consumers to reduce their video programming costs by providing their own equipment.

⁷ NPRM at ¶13.

⁸ Numerous parties seek to confuse the growth in the market for video services and the appearance of online video "apps" for a competitive marketplace for set top boxes. *See e.g.* Comments of the National Cable & Telecommunications Association (filed Apr. 22, 2016) at 2, 9-16, Appendix C ("NCTA Comments"). Coalition members are not sure what market the American Conservative Union is referring to when it claims the Commission is relying on "hypothetical harms" to justify its regulatory actions. Comments of the American Conservative Union (filed Apr. 22, 2016) at 1. Senators Markey and Blumenthal more than established the real harms at stake here. Moreover, as NTIA explained "...although the proliferation of MVPD-provided applications does produce significant consumer benefits, it does not address - let alone resolve - the competitive concerns at the heart of Section 629." NTIA Comments at 3.

⁹ NPRM at ¶13.

¹⁰ NPRM at ¶13.

¹¹ Equipment rates may also include additional fees required to enable use of such equipment including HD, DVR, additional outlet, and router fees.

¹² *See* Sections III & IV *infra*. Public Knowledge summed up today's market for navigational devices succinctly as: "[C]onsumers are getting ripped off." Public Knowledge Comments at 15.

¹³ The Local Coalition also respectfully suggests that the Commission consider issuing a Further Notice of Proposed Rulemaking to review the MVPD practice of bundling equipment with services, or reclassifying equipment functions as services.

4. Finally, the Local Coalition, requests that the Commission, as it crafts its final rules, ensure that consumers are entitled to see all “Service Discovery Data” provided by their MVPDs and that consumers employing a competitive box have the ability to identify and find all the programming that their MVPD provides. In taking such action, the Commission will protect and preserve Public, Educational and Governmental (“PEG”) channels and other independent programmers. The Commission will also ensure that consumers, who are charged additional fees for local PEG and broadcast channels, received full Service Discovery Data for these channels.¹⁴

II. THE COMMISSION HAS THE LEGAL AUTHORITY AND OBLIGATION TO PROMOTE THE COMMERCIAL AVAILABILITY OF CONVERTER BOXES AND INTERACTIVE COMMUNICATIONS EQUIPMENT¹⁵

The primary purpose of Section 629 is to “...ensure that consumers are not forced to purchase or lease a specific, proprietary converter box, interactive device or other equipment from the cable system or network operator.”¹⁶ As NTIA noted in its filing, Section 629 established the “... specific mandate that the FCC assure a competitive market for such navigation devices reflects Congress’s conclusion that competition in navigation devices is ‘an important national goal’ because it will lead ‘to innovation, lower prices and higher quality.’”¹⁷

In enacting Section 629, Congress directed the Commission to:

[I]n consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video

¹⁴ In most communities, the MVPD, as is their right, assesses and list PEG expenses as a separate line item on subscriber’s bills. This means that consumers are paying for access to PEG and should not be deprived of “seeing” the programming regardless of STB employed.

¹⁵ Local Coalition members are aware of the numerous concerns that have been raised regarding the need to protect intellectual property and programming content and business arrangements. We believe that it goes without saying that such protections must be in place before any order moves forward. But Coalition members note that significant content owners such as Amazon believe that “robust media protection technology is already available and in use by MVPDs....[T]he Commission can proceed in writing its rules with the knowledge that third-party providers have the ability and the proven track record to protect programming content.” Amazon Comments at 5, 6.

¹⁶ H. R. Rep. No. 104-204, Pt. I, at 112, 104th Cong., 1st Sess. (1995). See also H. Conf. Rep. No. 104-458, at 181, 104th Cong., 2d Sess. (1996), reprinted in 1996 U.S.C.C.A.N. 124, 194

¹⁷ NTIA Comments at 2.

programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.¹⁸

Local Coalition members are grateful to the Commission that in this NPRM, the Commission begins to fulfil that directive.

While it does not appear any of the parties to this proceeding challenge the legal mandate of the Commission to create the competitive marketplace for navigation devices,¹⁹ the Local Coalition applauds the Commission for documenting in robust detail its legal authority to proceed in the manner as outlined in the NPRM. Moreover, the Commission further established its predicate for action: the market for navigation devices is not competitive.²⁰ And moreover, that competition in this market sector can benefit consumers.

III. A COMPETITIVE MARKETPLACE FOR NAVIGATIONAL DEVICES DOES NOT EXIST TODAY

The record in this proceeding enforces the Commission’s tentative conclusion that the market for the competitive availability of navigation devices has not met the congressional mandate for Section 629.²¹ The Commission’s tentative conclusion is supported by numerous filings in the docket.

¹⁸ 47 U.S.C. § 549. As TiVo noted at 10, “More recently, Congress confirmed its continued support of Section 629 in STELAR, which required the Chairman of the FCC to convene a working group of experts and stakeholders from a wide range of perspectives ‘to identify, report, and recommend performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform, and technology- and platform- neutral software based downloadable security system *designed to promote the competitive availability of navigation devices in furtherance of Section 629 of the Communications Act.*’” (Pub. L. No. 113-200, § 106(d), 128 Stat. 2059, 2063 (2014)).

¹⁹ It is true that some of the parties challenge whether the FCC’s actions are an over reading of its authority in Section 629, (See e.g. NCTA Comments at 161-168 and Appendix A), but it is clear that Congress delegated the authority and obligation to create a competitive marketplace in Section 629.

²⁰ NPRM at ¶12.

²¹ NTIA Comments at 4. Local Coalition members recognize that numerous parties do not agree with this assessment. See e.g. Comments of the International Center for Law & Economics (filed Apr. 22, 2016). “With this NPRM the Commission undertakes an intervention into a market that is robust, competitive, and scarcely in need of regulatory assistance.” International Center for Law & Economics at 2. But the fact that consumers may have a

Amazon documented that consumers enjoy a wealth of choice in almost every facet of the software and devices that comprise today's video and communications sphere except navigational devices to access MVPD-delivered content.²² NTIA, using industry data, established the breadth of the market. The Agency noted that there are "the approximately 100 million American households that currently subscribe to an MVPD service [that] lack the competitive choices that Congress has mandated."²³ NTIA goes on to cite Commissioner Pai's dissent²⁴ to point out that available evidence clearly suggests that consumers have few alternatives to MVPD-supplied navigation devices and are frustrated by the high cost of leasing those devices.²⁵

Earlier in the proceeding, in a January 2016 *Ex Parte* presentation,²⁶ the Consumer Federation of America and Public Knowledge provided the Commission with further evidence that there is not a competitive marketplace for navigational devices. CFA and Public Knowledge demonstrated this lack of competition by revealing the average charge for a set-top box leased from an MVPD has increased 185% since 1994, while the costs of other consumer electronics

choice in MVPDs does not equal STB competition – a misguided argument made by the International Center for Law & Economics and most of the MVPDs that filed in this proceeding.

²² Amazon Comments at 1.

²³ NTIA Comments at 3. The Consumer Video Choice Coalition comments in the DSTAC proceeding assertion is still correct: "Consumers have no practical alternatives to renting set-top boxes that can access MVPD content The time is ripe for the Commission to develop a universally relied upon standard that ensures that design and licensing of technology is not controlled only by a few special interests." *In the Matter of Final Report of the Downloadable Security Technology Advisory Committee*, Comments of Consumer Video Choice Coalition, MB Docket 15-64 (filed Oct. 8, 2015) at 6.

²⁴ See, e.g., *Notice*, Dissenting Statement of Commissioner Ajit Pai, at 1 (Pai Dissenting Statement), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-18A1_Rcd.pdf.

²⁵ NTIA Comments at 3.

²⁶ *In the Matter of Final Report of the Downloadable Security Technology Advisory Committee*, Letter from Consumer Federation of America and Public Knowledge to Marlene H. Dortch, Secretary, FCC, MB Docket 15-64 (Jan. 20, 2016), available at <http://apps.fcc.gov/ecfs/document/view?id=60001409005>. Some types of equipment, such as HD converter boxes and DVR devices were not commonly offered in 2007.

have decreased 90% over the same time period.²⁷ When you compare these two price trends, CFA estimated that consumers are overpaying as much as \$14 billion per year.

Since 2007, Coalition member Montgomery County has been reporting equipment costs for navigational devices in the County to the Commission and requesting that the Commission take action to further implement Section 629.²⁸ Montgomery County’s research reveals that some equipment prices have increased, while others have decreased, but that most providers require the purchase of additional services or subscriptions for higher levels of service. These additional equipment charges include payment of additional HD, Broadcast, Sport Surcharges, DVR Service, and router rentals or purchase. The lesson for the Commission is not so much the yearly growth in price, but rather the large aggregate costs being paid by consumers for equipment leasing.

A review of just the past four years (2012 to 2016) in Montgomery County reveals the following cumulative impact of equipment charges²⁹ and this is across all three providers.

Equipment Charges	2012-2016 Total			
	2012	2016	4-yr Total Fee	3-TV Household
Comcast				
Limited Converter	\$ 0.60	\$ 1.00	\$ 38.40	\$ 115.20
SD Converter	\$ 2.15	\$ 2.50	\$ 111.60	\$ 334.80

²⁷ *Id.* at 1-2.

²⁸ See, *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Comments of Montgomery County, Maryland, MB Docket No. 07-269 (filed May 20, 2009); *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Comments of Montgomery County, Maryland to Supplemental NOI, MB Docket No. 07-269 (filed Jul. 29, 2009); *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996 Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Reply Comments of Montgomery County, Maryland, CS Docket No. 97-80 (filed Jun. 28, 2010); *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Reply Comments of Montgomery County, Maryland, MB Docket No. 07-269 (filed Jul. 8, 2011); *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Reply Comments of Montgomery County, Maryland, MB Docket No. 12-203 (filed Oct. 10, 2012).

²⁹ A four-year period is employed as it has been that long since Coalition member, Montgomery County, last requested that the Commission fully implement Section 629 in 2012.

Equipment Charges			2012-2016 Total	
HD Converter	\$ 9.25	\$ 9.95	\$ 460.80	\$ 1,382.40
HD DVR Converter	\$ 26.90	\$ 19.95	\$ 1,124.40	\$ 3,373.20

RCN	2012	2016	4-yr Total Fee	3-TV Household
Limited Converter	\$ 4.95	\$ 8.45	\$ 321.60	\$ 964.80
SD Converter	\$ 4.95	\$ 8.45	\$ 321.60	\$ 964.80
HD Converter	\$ 9.95	\$ 11.45	\$ 513.60	\$ 1,540.80
HD DVR Converter	\$ 19.95	\$ 15.95	\$ 861.60	\$ 2,584.80

Equipment Charges			2012-2016 Total	
Verizon	2012	2016	4-yr Total Fee	3-TV Household
Limited Converter	\$ 5.99	\$ 12.00	\$ 431.76	\$ 1,295.28
HD Converter	\$ 11.99	\$ 12.00	\$ 575.76	\$ 1,727.28
HD DVR Converter	\$ 36.98	\$ 34.00	\$ 1,703.52	\$ 5,110.56

The absence of a competitive, consumer market for navigation devices means that consumers pay many times the cost of equipment, despite that the MVPD having likely fully depreciated the cost of the equipment. Adding insult to this injury, most consumers are required to pay for the full replacement value of equipment lost, stolen or broken.³⁰

IV. THE CREATION OF A COMPETITIVE MARKETPLACE HAS THE POTENTIAL TO BENEFIT CONSUMERS TODAY AS ENVISIONED BY CONGRESS IN MANDATE OF SECTION 629

The record is also robust in its documenting that the creation of a competitive marketplace in navigational devices has the potential to benefit consumers both financially and in terms of services available.³¹

³⁰ Coalition members would welcome the Commission’s leadership to explore whether it has the authority to require MVPDs to allow consumers to purchase their set top box as this would be the fastest way to promote market benefits.

³¹ As referenced by numerous parties, Senators Markey and Blumenthal documented: 99 percent of customers rent their set-top box directly from their pay-TV provider; the set-top box rental market may be worth more than \$19.5 billion per year; and the average American household spends more than \$231 per year on set-top box rental fees. *See Markey, Blumenthal Decry Lack of Choice, Competition in Pay-TV Video Box Marketplace*, July 30, 2015, <http://www.markey.senate.gov/news/press-releases/markey-blumenthal-decry-lack-of-choicecompetition-in-pay-tv-video-box-marketplace> (Markey/Blumenthal Statement).

At the local level, Montgomery County estimates that equipment costs comprise 18% to 25% of total fees collected from County cable subscribers. A review of the three MVPDs providing service in the community 2016 Rate Card data,³² reveals the following information:

2016 Sample Cable Service & Equipment Rates - Montgomery County, MD

Limited Basic SD	Service	1 Room	2 Rooms	3 Rooms
Comcast	\$ 23.95	\$ 25.13	\$ 29.12	\$ 33.11
RCN	\$ 34.28	\$ 42.73	\$ 51.18	\$ 59.63
Verizon	\$ 15.98	\$ 37.98	\$ 49.98	\$ 61.98

Standard Digital SD	Service	1 Room	2 Rooms	3 Rooms
Comcast*	\$ 77.95	\$ 77.95	\$ 87.90	\$ 97.85
RCN	\$ 111.45	\$ 119.90	\$ 128.35	\$ 136.80

Economy Digital HD	Service	1 Room	2 Rooms	3 Rooms
Comcast*	\$ 77.95	\$ 77.95	\$ 87.90	\$ 97.85
Verizon	\$ 73.87	\$ 95.87	\$ 107.87	\$ 119.87

Standard Digital HD	Service	1 Room	2 Rooms	3 Rooms
Comcast*	\$ 95.80	\$ 95.80	\$ 105.75	\$ 115.70
RCN	\$ 111.45	\$ 119.90	\$ 128.35	\$ 136.80
Verizon	\$ 83.87	\$ 105.87	\$ 189.74	\$ 201.74

Standard Digital HD w DVR	Service	1 Room	2 Rooms	3 Rooms
Comcast	\$ 105.75	\$ 115.75	\$ 135.70	\$ 155.65
RCN	\$ 111.45	\$ 127.40	\$ 143.35	\$ 150.30
Verizon	\$ 83.87	\$ 105.87	\$ 139.87	\$ 151.87

*Service package offered with equipment
 DVR equipment rates are shown for stand-alone video service. Broadband-enabled service may lower rates for multi-room DVR functionality.

The practice of some providers of offering service with equipment makes it easier for consumers to determine what the total monthly fee will be, but more difficult to calculate what percentage of a consumer's bill can be attributed to equipment costs. Based on the figures above, the Local Coalition estimates that in at least one of its communities, equipment for

³² See 2016 Montgomery County rate cards attached as Exhibit A.

service in 1 to 3 rooms based upon their choice of MVPD, increases the subscriber's monthly cable as follows:

2016 Sample Cable Bill Attributable to Equipment Fees - Montgomery County, MD

Limited Basic SD	1 Room	2 Rooms	3 Rooms
Comcast*	4.9%	21.6%	38.2%
RCN	24.6%	49.3%	73.9%
Verizon**	137.7%	212.8%	287.9%

Standard Digital SD	1 Room	2 Rooms	3 Rooms
Comcast*	0.0%	12.8%	25.5%
RCN	7.6%	15.2%	22.7%

Economy Digital HD	1 Room	2 Rooms	3 Rooms
Comcast*	0.0%	12.8%	25.5%
Verizon**	29.8%	46.0%	62.3%

Standard Digital HD	1 Room	2 Rooms	3 Rooms
Comcast*	0.0%	10.4%	20.8%
RCN	7.6%	15.2%	22.7%
Verizon**	26.2%	126.2%	140.5%

Standard Digital HD w DVR	1 Room	2 Rooms	3 Rooms
Comcast	9.5%	28.3%	47.2%
RCN	14.3%	28.6%	42.9%
Verizon**	26.2%	66.8%	81.1%

*Service package offered only with equipment

**Verizon TV requires purchase or rental of a router

Using a single community, that should be a best test case for MVPDs, since the community is served by three providers, and therefore likely to reflect marketplace competition, none-the-less demonstrates the potential benefit to consumers of realizing the 1996 Congressional vision of creating a competitive market for navigation devices. We believe the data supports the conclusions:

- A competitive market could provide consumers with an option to purchase equipment as an alternative to paying an additional 7.6% to 93% in equipment charges each month, and

- Competition for third-parties (as well as from over-the-top video providers) may spur MVPDs to offer consumers innovative alternatives to costly equipment rentals.³³

A. Navigational Prices Should Be Listed On Consumer Bills And Webpages

While the research above makes clear that navigational prices significantly impact the price a consumer pays for their MVPD package of services, it is not clear that consumers are aware of the costs. For that reason, the Local Coalition supports the Commission’s proposed revisions to 47 C.F.R. §76.1206, to require that navigation device prices to be listed separately on consumer bills. And because consumers increasingly do their comparison shopping on line, the Coalition would recommend that the Commission expand its requirement for disclosure of prices to include listing equipment pricing on the MVPD’s webpage.³⁴

B. The Commission Should Examine The Effects of Reclassifying Equipment Functions As Services.

The Local Coalition respectfully suggests that the Commission should also consider opening an additional proceeding to examine the effects of MVPDs’ bundling equipment functions with services, or reclassifying equipment functions as services. It appears to the Local Coalition that there is an increase in the MVPD practice of conflating service and equipment functions. This practice may well be frustrating both Congressional and Commission intent to allow consumers to reduce their video programming costs by providing their own equipment. For example:

³³ As an example, channels that offer access to live or on-demand streaming with a verified MVPD subscription, *e.g.*, ESPN, HBO, TBS, a subscriber with a broadband connection can view such MVPD content on a television, through a broadband connection on a smart phone, tablet or computer, without paying additional equipment fees. Yet if a subscriber wants to watch that same content on a television using a set-top box, there is a substantial service and equipment fees levied by the MVPD for service and equipment at an additional outlet

³⁴ Local Coalition members suggest that the Commission expand this proposed rule to require that all MVPDs state the price for Navigation Devices separately on their annual rate cards and that MVPDs should be required to post these rate cards on their websites in a clear and conspicuous manner. In preparing the analysis for this filing, Montgomery County found none of the rate cards for the County’s three franchises cable operators were posted on their respective websites.

- Comcast 2016 Rate Card (last page) states: “If you are video services customer and you own a compatible digital converter or CableCARD device, please call 1-800-XFINITY for pricing information or visit www.comcast.com/equipmentpolicy.” This webpage states: “Customers who qualify will receive a monthly credit of \$2.50 for each qualifying activated CableCARD device or converter.” However, on page 2 of its Rate Card, Comcast lists 1 converter that can be used for all service tiers, and equipment that can only be used with limited basic service. Comcast lists the converter box charge as \$2.50, but lists a \$9.95 HD technology fee and a \$10.00 DVR service fee, and then lists additional digital outlets as a service which requires HD, DVR, or both (DVR service requires HD). Thus, if a subscriber brings his or her own equipment, the credit is only 25% to 12.5% of the cost of adding additional service. While there may be legitimate service-related costs, such as the cost to purchase HD programs, included in the additional service fees, the Commission could review whether the credit given for consumers bringing their own equipment is equivalent to the cost-avoidance for the MVPD of providing equipment.
- RCN’s and Verizon’s 2016 Rate Cards list equipment costs, but do not state whether subscribers will receive a credit equivalent to the equipment rates if they bring their own equipment. Verizon lists DVRs as a service and requires both a converter box rental and DVR service to receive DVR functionality.

Reviewing whether the Commission should take further steps to ensure that the goals and intent of Section 629 implementation rules are not frustrated is an important consumer protection issue that could and should be addressed.

V. ANY NAVIGATIONAL DEVICE AND SERVICE DISCOVERY DATA MUST ENSURE THAT ALL PROGRAMMING, SUCH AS PEG CHANNELS, IS VISIBLE TO THE CONSUMER

Local Coalition members understand the NPRM to require that the “Service Discovery Data” must include at a minimum, “channel information (if any), program title, rating/parental control information, program start and stop times (or program length, for on-demand programming), and an ‘Entertainment Identifier Register ID’ so that competitive navigation devices can accurately convey to consumers the programming that is available.”³⁵ Local

³⁵ NPRM at ¶38.

Coalition members believe that “Service Discovery Data” is vital and welcomes the Commission’s actions.

In the NPRM, the Commission proposes to also require the following:

- 47 C.F.R. § 76.1200(e) *Navigable Service*. A multichannel video programmer’s video programming and Emergency Alert Systems messages (see 47 C.F.R. Part 11).
- 47 C.F.R. § 76.1200(f) *Service Discovery Data*. Information about available Navigable Services and any instruction necessary to request a Navigable Service.
- 47 C.F.R. § 76.1200(g) *Entitlement Data*. Information about (1) which Navigable Services a subscriber has the rights to access and (2) the rights the subscriber has to use those Navigable Services Entitlement data shall reflect identical rights that a consumer has on Navigation Devices that the multichannel video programming distributor sells or leases to its subscribers.

The Commission should clarify that under Section 76.1200(g), the “subscriber has the right to access” all Service Discovery Data for all the MVPD programming purchased by the subscriber. Further that subsection (2) of the definition cannot be interpreted as a grant of authority to the MVPD to limit the rights of a consumer to Service Discovery Data on the MVPD’s Navigation Devices, nor to limit the right of a consumer to Service Discovery Data on any Certified Navigation Devices.

MVPDs, specifically cable operators who carry PEG programming channels on their systems, charge consumers additional “PEG” fees to recover the costs of supporting such channels. Increasingly, MVPDs are adding additional surcharges for local broadcast channels.³⁶ The consumers who are required to pay these additional surcharges for local PEG and broadcast channels have a right to the Service Discovery Data provided by the video programmers, and

³⁶ See e.g., Exhibit A, Montgomery County 2016 Cable Rate Cards. Comcast charges \$1.50 per month for local PEG and \$5.00 per month for local Broadcast channels; RCN charges \$7.78 per month for local Broadcast channels and an additional percentage-based fee for local PEG channels; Verizon charges \$2.99 per month for local Broadcast channels and an additional percentage-based fee for local PEG channels.

MVPDs should not be able to both charge consumers additional fees for these local channels, and then deny consumers access to Service Discovery Data needed to fully enjoy these same channels. Local Coalition members respectfully ask the Commission to clarify the obligations under the newly proposed Section 76.1200, *et seq.* rules as a means to ensure that all programming, including independent programming such as PEG channels will be fully visible to a MVPD subscriber regardless of the STB or App employed. Moreover, Local Coalition members are relying upon the Congress's³⁷ and Commission's³⁸ prior expressions of support for PEG to warrant such a clarification.

The request to ensure that PEG programming is fully visible to the subscriber should not be taken lightly as there are examples in the market today, and documented in other FCC proceedings of how PEG is not eligible for the same treatment or capabilities as other programming carried by MVPDs.³⁹ For example Optimum Cable provides its customers a

³⁷ In 1984, Congress enacted the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779, codified as amended, at Title VI of the Communications Act of 1934, 47 U.S.C. §§ 521, *et seq.* (the "Cable Act"). To further the goal of providing "the widest possible diversity of information sources and services to the public," 47 U.S.C. § 521(4), the Cable Act ratified local governments' authority to require cable operators to provide system channel capacity for PEG access as a condition for franchise approval, 47 U.S.C. § 531(b). Any discriminatory and inequitable treatment of PEG programming is directly contrary to Congress's express intent in enacting the 1984 and 1992 Cable Acts, as well as longstanding Commission policy concerning PEG signal quality requirements. The 1984 House Report (H. Rep. No. 934, 98th Cong., 2d Sess. (1984), reprinted in 1984 U.S.C.A.N. 4655, 4667 ("1984 House Report")) noted that "cable television, with its abundance of channels, can provide the public and [PEG] program providers [with] meaningful access" (*Id.* at 30) to "people other than[television] licensees or owners of those media."(*Id.*) That "meaningful access" was in the form of "channels." And with respect to those PEG channels, "cable operators act as [sic] conduits."(*Id.* at 35.)

³⁸ For over twenty years, the Commission has made clear its view that cable operators may not discriminate against PEG. From its extending the technical signal quality guidelines to PEG channels in the 1988 Cable Technical Standards (*Review of the Technical and Operational Requirements of Part 76, Cable Television*, Further Notice of Proposed Rule Making, 3 FCC Rcd. 5966 (1988) ("1988 Cable Technical Standards FNPRM")) to providing clarifications to Congress that the PEG nondiscrimination principle extends to an incumbent cable operator's shift of PEG channels to the digital tier. (See *Letter to Joseph Van Eaton from Monica Shah Desai, Chief FCC Media Bureau, re: City of Dearborn v. Comcast Heights III, Inc., and Comcast of the South*, dated Jan. 18, 2009. See also Public, Educational and Governmental (PEG) Access to Cable Television: Hearing Before the H. Subcomm. on Fin. Servs. and Gen. Gov't Appropriations of the H. Comm. on Appropriations ("House PEG Hearing"), 110th Cong. 10-11 (2008) (testimony of Monica Desai, Chief of the Media Bureau, FCC).

³⁹ See *e.g.*, Independent Programming NOI. In its filings, the Alliance for Community Media explained the negative impact on audience viewership that such discriminatory treatment on PEG. "Viewer surveys indicate that a major

Multi-Room DVR service to record programming from the operator with a major exception: “Interactive channels, Music Choice, Pay Per View, Public Education Government and Video On Demand channels currently cannot be recorded.”⁴⁰

A. Programming Guides Information Should Be Treated As part of the Service Discovery Data

Increasingly, consumers rely on electronic program guides or onscreen guides to find content and use DVR functions.⁴¹ MVPDs are increasingly marketing search functionality as a replacement for “surfing” channels or onscreen guides.⁴² The information gathered for such guides is becoming as much a part of the Service Discovery Data and the technical information that proposed rules seeks to have shared. If PEG programming and other independent programming is to survive in this new program guided world, MVPDs must not be permitted to deny Independent programmers such as PEG from offering Service Discovery Data for local PEG, local broadcast or other non-affiliated programmers.

The Commission has opened an NOI to address issues faced by independent programmers, including PEG, to gain access to MVPD systems.⁴³ The Local Coalition filed

factor for channel viewership on a cable system is subscribers’ ability to find a channel, and to record the channel’s programs to view at their convenience. By denying viewers the ability to find and record PEG channels, MVPDs create an uneven playing field for PEG channels. PEG channels are also subject to channel slamming. These tactics have two primary effects, both of which suppress diverse and independent programming. First, it allows MVPDs to manipulate viewership in order to drive down viewership numbers in community needs assessments in franchise negotiations with local authorities, thus freeing up potential channels, which the operator can use for advertising—supporting sales to benefit its own economic interests.” In the Matter of Promoting the Availability of Diverse and Independent Programming, Comments of ACM, MB Docket No. 16-41 (filed Mar. 30, 2016) at 5.

⁴⁰ See Optimum web page http://optimum.custhelp.com/app/answers/detail/a_id/2580/~/about-multi-room-dvr* (Last Visited May 20, 2016). Other examples of

⁴¹ “63.4 percent of current cable subscribers in Montgomery County, MD recently surveyed stated that they always or frequently use the on-screen program guide to decide what to watch.” MB Docket No. 12-108 (filed Sept. 9, 2013) at Attachment 1.

⁴² See generally, Comcast X1 and X2 marketing materials.

⁴³ In the Matter of Promoting the Availability of Diverse and Independent Programming, Notice of Inquiry (rel. Feb. 18, 2016) (“Independent Programming NOI”).

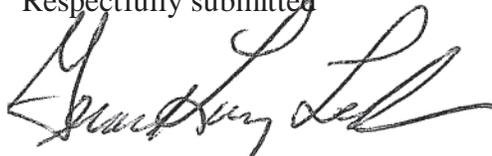
Reply Comments in that proceeding which we incorporate here by reference. We seek the Commission's leadership to ensure that MVPDs cannot impair any video programmers, but especially PEG programmer, from the opportunity to provide Service Discovery Data about their programming to subscribers.

CONCLUSION

The Local Coalition files these reply comments to add their voice to the chorus of commenters that agree with the Commission's tentative conclusions that

- Section 629 both authorizes and obligates the Commission to assure a commercial market for devices that can access multichannel video programming and other services offered over multichannel video programming systems.
- Consumers have few alternatives to leasing set-top boxes from anyone other than their MVPD is firmly grounded in the record.
- A competitive marketplace for navigation devices today has the potential to benefit consumers and is supported by service and equipment rate data from local communities, and
- The Commission, as it crafts its final rules, ensure that consumers are entitled to see all "Service Discovery Data" provided by their MVPDs and that consumers employing a competitive box have the ability to identify and find all the programming that their MVPD provides. In taking such action, the Commission will protect and preserve Public, Educational and Governmental ("PEG") channels and other independent programmers.

Respectfully submitted



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