

April 13, 2010

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554

RE: Notice of *Ex Parte* presentation in:                      CSR-7902-Z  
   CS Docket No. 97-80  
   GN Docket No. 09-51

Dear Ms. Dortch:

On behalf of Public Knowledge, this letter is to provide information relating to discussions between Public Knowledge (PK) and a member of the Commission's staff on April 12, 2010.

Present at the meeting were: Harold Feld, Legal Director, PK; Michael Weinberg, Staff Attorney, PK; and Joshua Cinelli, Media Advisor, Office of Commissioner Copps.

PK expressed support for the aggressive timelines for set top box reform established by the Commission, and urged the Commission to be vigilant in honoring its goals. Consumers have waited too long for true set top box competition, and now that the Commission has decided address this problem it is critical to move quickly.

PK also expressed concern about a proposal to incorporate the current Evolution waiver into Commission rules. First and foremost, PK insisted that that the Commission resolve its pending Petition for Reconsideration of the waiver before taking any steps to extend its reach. The current waiver process has injured companies who, in good faith, invested in developing compliant set top boxes with the intention of bringing them to market.

Creating exceptions to set top box rules that would allow operators to offer high-functioning boxes would undermine any efforts to create a viable consumer market for set top boxes. Each exception and waiver that allows additional functionality in carrier supplied set top boxes reduces customer incentive to look for alternatives, and undermines attempts by independent consumer electronics manufacturers to create compelling products for consumers.

As the Commission moves forward on both short term CableCARD reform and the medium and long term development of a video gateway, it must maintain the creation of an independent set top box market as the guiding priority. In order to create this market, the video gateway device must make content accessible to third party developers and consumer electronics manufacturers. The license to access content must not be a barrier to innovation and the development of new products. In addition to access to video content, the video gateway must also provide for access to the metadata, including program guide information, that truly competitive set top box offerings would require.

Finally, PK pointed out that nothing in the video gateway proposal prevents a video provider from differentiating itself, or from offering its own set top box and user interface. In fact, video providers should be encouraged to do so. However, consumers should be free to make a meaningful choice between the set top box and interface offered by their video provider and those offered by independent companies.

In accordance with the FCC's *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Michael Weinberg  
Staff Attorney  
Public Knowledge

CC: Joshua Cinelli