

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Video Device Competition	)	MB Docket No. 10-91
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of Navigation Devices	)	
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	PP Docket No. 00-67
	)	

**COMMENTS OF CHARTER COMMUNICATIONS INC.  
ON THE COMMISSION'S NOTICE OF INQUIRY**

Charter Communications, Inc. (“Charter”) hereby submits its comments in response to the Notice of Inquiry (“*NOI*”)<sup>1</sup> in the above-captioned proceedings. Charter supports the comments of the National Cable & Telecommunications Association and is submitting these additional comments separately to emphasize and elaborate on certain issues.

Through massive capital investments to upgrade its systems and services, Charter built itself from a relatively small MSO to the fourth largest cable company serving 5.3 million customers. Customers who were receiving one-way analog television services from small capacity cable systems are now able to enjoy vastly expanded choices of basic and premium channels, digital cable with hundreds of channels, high definition, video on demand, personal video recorders, broadband Internet service of up to 60 Mbps, and a choice in voice providers. Charter is committed to innovation and consumer choice.

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<sup>1</sup> See Notice of Inquiry, FCC 10-60, 75 Fed. Reg. 27264 (May 14, 2010) (“*NOI*”).

The *NOI* is also grounded in a commitment to innovation and consumer choice. It seeks to promote investment, competition, and innovation by promoting new ways for consumers to watch video from multiple sources. The *NOI* suggests one approach under which video devices could receive any MVPD service over one standardized interface, and then rearrange and present MVPD programming and other video sources through an integrated user interface defined by the retail device manufacturer. The suggested approach may sound simple, but it could inadvertently undermine the very competition and innovation that the Commission is seeking to promote.

#### **I. THE “ALLVID” APPROACH AS ENVISIONED IN THE *NOI* DOES NOT FIT RETAIL BUSINESS REALITIES**

The *NOI* envisions retail devices that can combine MVPD programming and other video sources in an integrated presentation defined by the retail device manufacturer. Some parties take this yet another step, proposing to convert cable operators into wholesale providers of cable content which can be repackaged and even rebranded as a third party’s own service. One proponent has asked for rules under which “[c]ontent is successfully decoupled from the delivery medium, and navigation from the content” and “content can float anywhere.”<sup>2</sup> Another proposed to strip the trademarks off of a cable operator’s guide and programming services and repackage them under its own mark.<sup>3</sup>

Charter operates as a video retailer in vigorous competition with other video retailers. Customers can chose DBS providers DISH and DirecTV, telephone video providers such as Verizon and AT&T, and “over the top” video networks using personal computers, gaming

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<sup>2</sup> See Comments of Netmagic Solutions Inc., NBP Public Notice # 27 (Dec. 21, 2009). Likewise, TiVo asks for this result “even if this disrupts the MVPD’s preferred financial models [and] irrespective of an MVPD’s desire to turn its bottom-line preferences into licensing obligations.” See Comments of TiVo, NBP Public Notice # 27, at 4-5, 17 (Dec. 22, 2009).

<sup>3</sup> See Letter from Matthew Zinn, Senior Vice President, General Counsel, Secretary, and Chief Privacy Officer, TiVo Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80 (Feb. 17, 2010) at 15 (“TiVo does not want to be forced to use any of the MVPD’s branding....”).

consoles, digital televisions, and a multitude of other devices that stream Internet video to the television screen.

To operate as a retailer, Charter is constantly seeking the most attractive mix of programming and services to attract and retain customers. Charter negotiates rights from programmers in individually-negotiated carriage agreements to obtain the programming it offers at retail. The content is not licensed as a free-floating asset for wholesale distribution. It comes at a price, and with conditions. Programmers may set channel position or require carriage in a particular tier or neighborhood. They may define the territories in which the service may be carried. They may specify necessary content security measures, and even the devices to which we may carry the service. They may limit the type of advertising suitable for use with that programmer's brand. These programming agreements are the lifeblood of multi-channel content creators, providing \$30 billion in annual license fees from MVPDs to fund the creation of the content that consumers enjoy. Vying with each other, each MVPD seeks to negotiate rights for better and more diverse offerings, with the consumer reaping the benefit of an ever-improving array of choices.

With those negotiated rights, Charter then creates (and adjusts) programming prices and packages in order to meet or better the offerings of DirecTV, DISH, AT&T, and Verizon. Price competition alone is not enough. Customers need to have a sense of value, and retailers are constantly striving to convey that sense of value. For example, Charter might negotiate rights to exhibit particular programs on the same day they are released on DVD, and associate that program with a special Charter offer. Charter might place HBO on-demand channels immediately adjacent to HBO linear, in order to present customers with an easy way to access the programming, and as a way of reinforcing their sense of value in a premium subscription by

providing hundreds of hours of premium on-demand programming at no additional cost. Charter has also reached programming agreements so that its customers are able to access half a dozen popular networks on-line at Charter.net or through the programmers' websites, for no additional charge in their subscription. Retail branding and packaging are essential tools for the retail market. For consumers to have a continuing sense of value for their retail subscription, they need to associate the amount they pay each month with the value they receive from Charter's investment in network upgrades, Charter's expansion in service, the quality of Charter's 24/7 customer care, and the new services made available by Charter. It is the Charter brand and Charter's packaging that makes that association.

The suggestion in the *NOI* that MVPD's might be converted into wholesale suppliers would undermine Charter's ability to operate in this retail video marketplace. If a CE manufacturer were to rearrange the channel lineup or ignore the limitations under which the programming has been acquired, Charter may not be able to honor its existing programming agreements. If a CE manufacturer were to roll up the on-demand rights that Charter has negotiated into its own offering, or go so far as to rebrand the product, customers would not know what programs and web sites were being made available as part of their Charter subscription, and Charter's ability to market itself would be undermined.

The competitive retail model for video distribution has fueled the transformation of the one-way analog cable industry into the modern networks we today take for granted: vast choices of digital channels, high definition, video on demand, personal video recorders, broadband Internet service of up to 60 Mbps, and a choice in voice provider. It has led others to invest in competing distribution platforms, so that consumers may now chose cable, satellite, U-Verse, FiOS, or "over the top." By contrast, the wholesale model of video transport was tried – in video

dial tone and open video service – and failed. Charter fully supports the goal of providing consumers access to MVPD programming on more devices, but those goals do not require dismantling the retail cable business. Disaggregation or disintermediation of the MVPD business will not serve the goal of innovation and consumer choice. Instead, it would undermine the very economic structures that drive investments and innovation in multi-channel services.

## **II. THE TECHNOLOGY MANDATES CONTEMPLATED IN THE NOI WOULD BE A BARRIER TO INNOVATION**

The *NOI* proposes to mandate that each MVPD would translate its own network delivery technologies through an AllVid adapter. The adapters envisioned would be tailored to each MVPD, but the output envisioned would be standardized. There are many industry initiatives underway today for distributing MVPD programming through a wide variety of networking approaches connecting far more devices. Attempting to translate MVPD services to pass across a single standardized interface, however, runs a serious risk of frustrating, rather than promoting, such innovation.

As the AllVid approach is described in the *NOI*, the AllVid adapter would be responsible for all communications with the network, and downstream video devices would only need to discover what channels were available and tune to them across the standardized interface. This approach omits some key features of modern cable services. For example, Charter has launched switched digital video (SDV) in St. Louis, New England, and Los Angeles in order to open capacity for delivering more channels, more high definition, and faster broadband services. For SDV to work for the efficient utilization of spectrum, it recovers channels when they are no longer being watched. The network looks for tell-tale signs of viewer inactivity, asks the viewer if he or she is still watching, and recovers the channel if there is no response. The exact SDV techniques vary by vendor, but they rely upon SDV client software in the customer device or a

tuning adapter. For SDV to work in an “AllVid” environment, all current implementations would need to be ported to the interface, a predictable software client would need to be present in the retail device, the solutions would need to be tested for operability and for functional tuning performance, and room would need to be left for the implementations to continue to evolve. The “AllVid” approach outlined in the *NOI* makes no provision for these requirements. If there is no client to communicate viewing status upstream, there is no recovery of bandwidth, and SDV would fail in its essential purpose of opening bandwidth for more channels, more high-definition, faster broadband and more advanced services.

Audience measurement is another example of modern cable services that would be stranded by the AllVid approach as described in the *NOI*. Today, MVPDs measure audiences based upon when viewers tune in and tune out. This helps to determine which programs are most popular, how many people watch a program to its conclusion, what viewership to report to advertisers, which programs and channels to carry, and how to improve services.<sup>4</sup> MVPDs rely on programming in the set-top to make this work. If there is no method to measure audiences in this way, MVPDs are handicapped in their ability to optimize programming to meet changing viewer demand or to sell advertising that underwrites the programming and networks that consumers enjoy. The “AllVid” approach outlined in the *NOI* makes no provision for these requirements.

The presentation of cable services may appear simple on a television screen, but behind the scenes these services require sophisticated interplay between the headend and set-top boxes, which themselves are equipped with specific resources and programmed to respond to particular network signals and instructions.

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<sup>4</sup> All personally identifiable information is removed from this data.

To redesign on-demand, switched digital, electronic programming guides, interactive video enhancements, interactive advertising, caller ID on TV, and other modern services to pass through a one-size-fits-all output would require developing new standardized protocols for almost every service. Charter intends to continue its active participation in many inter-industry efforts and standards development organizations, but standards activities are extremely time consuming, often divisive, and sometimes used by one faction to block the progress of another or to promote its own intellectual property portfolio. We agree with the basic goal of the *NOI* to facilitate innovation and consumer choice. But it is unrealistic to expect that so many standardized protocols can be developed within the time frame expected by the Commission.

Even if every MVPD service today could be reengineered and ported across such an interface, it would pose a major barrier to future innovation. In today's rapidly-changing technology markets, companies invest substantial resources into competing technology and services to attract consumers. Companies can develop and try new services, and compete through price and innovation. If a government-mandated standard is imposed, firms with innovative new devices must instead argue before government regulators rather than investing and competing in the market. We have seen this under today's CableCARD rules, where innovative new approaches are challenged as "too advanced"<sup>5</sup> or "unnecessary."<sup>6</sup>

A standardized AllVid approach presents the same risk of frustrating innovation. For example, the Commission envisions choosing one content protection technology (DTCP-IP) for inside the home. But DTCP-IP is only a link protection that can take a program from one device

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<sup>5</sup> See, e.g., *Cable One, Inc.'s Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 24 FCC Rcd 7882 (rel. May 28, 2009) (considering whether to make high-definition DTAs available to consumers because they are no longer "advanced").

<sup>6</sup> Petition for Rulemaking of Public Knowledge, *et. al.*, CS Docket 97-80 (Dec. 18, 2009) at 36 ("It is important that the universal gateway not provide *unnecessary* capabilities...").

to another. It does not support the many business models under which programming may be provided. If Charter wanted to offer an on-demand movie for seven-day rental, it would need a rule change, because DTCP-IP does not support that business model. Likewise, although the Commission recently authorized studios to negotiate with MVPDs for the distribution of theatrical-release movies to the home before they are available on DVDs, the AllVid approach suggested by the *NOI* would frustrate that offering. The *NOI* proposes to “give device manufacturers the ability to develop ‘smart’ products that can access any service that an MVPD provides without the need to enter into restrictive license agreements with MVPDs.”<sup>7</sup> But for Charter to offer theatrical-release movies, it needs to limit the sale to devices bound by license not to send the movie out through an unprotected interface onto the Internet. Under the license-free AllVid approach, theatrical-release movies may not be made available at all.

### **Conclusion**

The *NOI* is grounded in a commitment to innovation and consumer choice. We share that commitment. We subscribe to NCTA’s Consumer Principles fostering access to content where and when consumers want it.<sup>8</sup> We are participants in many inter-industry initiatives already underway for distributing services through a wide variety of home networking approaches, for connecting far more devices, and for fulfilling these objectives. These Consumer Principles and these inter-industry efforts can serve as the foundation for a wide variety of navigation device approaches and architectures and increased consumer choices. By contrast, the approach suggested by some parties to disaggregate the retail MVPD business and impose static

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<sup>7</sup> *NOI* at ¶16.

<sup>8</sup> See Letter from Kyle McSlarrow, NCTA, to Chairman Julius Genachowski, FCC (March 12, 2010).

technology mandates would undermine the economic structures that drive investments and innovation in multi-channel services, and would create substantial barriers to innovation.

Given such complex issues and such a dynamic marketplace, it would be far preferable to develop flexible solutions through industry consultation, specifications, standards and other private initiatives. We look forward to working with the Commission as it brings the necessary stakeholders together to create an even more dynamic video marketplace.

Respectfully submitted,

/s/ Paul Glist

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