

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

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

**COMMENTS OF TIME WARNER INC.**

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## **SUMMARY**

A dynamic marketplace currently offers consumers a myriad of ways to access and experience video content through a variety of electronics equipment, delivery platforms, and services. Content creators and programmers are a vital part of this marketplace and are responding to consumer demands by creating new services, features, functionalities, and interactive capabilities.

Innovation and collaboration among MVPDs, consumer electronics manufacturers, content creators, and programmers have fueled this consumer-friendly marketplace without government regulation, and allowing this process to continue free of mandated standards or other regulatory constraints, is the best way to maximize consumer benefits.

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**COMMENTS OF TIME WARNER INC.**

Time Warner Inc. (“Time Warner”), through its attorneys, hereby submits these comments in response to the *Notice of Inquiry* (“*NOI*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.<sup>1/</sup> Time Warner is a content-focused company which, through its divisions, is involved in the production of motion pictures, broadcast and multichannel television programming, and digital products and services, as well as the packaging of multichannel television programming networks.<sup>2/</sup> As an industry leader in both the creation and packaging of high quality content, and technical innovations that

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<sup>1/</sup> *Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, MB Docket No. 10-91, CS Docket No. 97-80, PP Docket No. 00-67 (rel. April 21, 2010) (“*NOI*”).

<sup>2/</sup> Time Warner’s motion picture and television production studio assets include Warner Bros. Pictures and Warner Bros. Television. The company’s programming networks include Home Box Office and Cinemax, as well as CNN, TNT, TBS, Cartoon Network, and other Turner Broadcasting System Inc. cable networks. All of Time Warner’s businesses, including the Time Inc. publishing business, are actively engaged in the provision and development of digital products and services for multiple platforms.

enable new ways for consumers to access this content, Time Warner has a strong interest in this proceeding.

Content creators and programmers, such as Time Warner, are committed to engaging consumers with rich video content, and improving their viewing experience through innovation and choice. The consumer experience is best enhanced by collaboration among, and innovation by, all segments of the video distribution chain, including content creators and suppliers, distribution platforms, and consumer electronics manufacturers. As a result, Time Warner looks forward to participating in the dialogue initiated by the *NOI* and supports collaborative, voluntary efforts that encourage continued growth in choice, innovation, and enhancements for consumers in their content viewing opportunities.

**I. CONSUMERS TODAY HAVE AN UNPARALLELED ABILITY TO ACCESS AND EXPERIENCE VIDEO CONTENT IN MULTIPLE, INNOVATIVE WAYS**

As the Commission considers various proposals in this proceeding to enable the retail availability of ‘smart video devices’ that are compatible with multichannel video programming distributor (“MVPD”) services, it is important to recognize at the outset that the delivery and display of video content has moved far beyond standard linear networks delivered by MVPDs to television sets in the home. Indeed, consumers are benefitting from widespread, dynamic innovation that has greatly expanded their abilities to access video content on multiple platforms and through myriad devices. This innovation is occurring at all points in the video distribution chain, and with a rapidity that is unprecedented.

For example, consumers today have a wide range of options in terms of the consumer electronics equipment, delivery platforms, and services that they can use to access video content. Internet connected television sets give consumers the ability to instantly stream or download television programs and movies from a growing variety of sources, including integrated

“widgets.”<sup>3/</sup> Many game console systems now offer similar functionality and services, including Xbox, PS3, and Wii, and media gateways such as Sezmi and Apple TV are providing new options for consumers to organize and personalize their video experience.<sup>4/</sup> Consumers also can instantly download movies and programs on their computers or televisions through Amazon.com, iTunes, and other portals.<sup>5/</sup> These services are compatible with portable devices from a variety of manufacturers, including smartphones, iPods, and iPads, and enable consumers to view video from any location at any time.<sup>6/</sup> Applications and widgets on these platforms can

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<sup>3/</sup> For example, Sony Bravia televisions have Internet connectivity that enables both streaming video and downloads from online sources like Amazon Video on Demand. *See* [http://www.sonymstyle.com/webapp/wcs/stores/servlet/CategoryDisplay?catalogId=10551&storeId=10151&categoryId=16189#/panel\\_prod1](http://www.sonymstyle.com/webapp/wcs/stores/servlet/CategoryDisplay?catalogId=10551&storeId=10151&categoryId=16189#/panel_prod1) (“Have your favorite internet content delivered to your TV screen with BRAVIA Internet Video and Widgets.”). Among other products, LG’s NetCast product line, Vizio’s VIA models, and Panasonic’s VIERA Cast HDTVs have similar capabilities. *See e.g.*, <http://www.lg.com/us/netcast/index.jsp>; <http://www.vizio.com/discover/via>; <http://www2.panasonic.com/consumer-electronics/learn/Televisions/vieracast/>.

<sup>4/</sup> Xbox LIVE and Zune offer a variety of Internet-connected entertainment options, including movie downloads. *See* <http://www.xbox.com/en-US/kinect/entertainment.htm> and <http://www.zune.net/en-US/products/ZuneonXbox/default>. Playstation<sup>®</sup>3 now has a built-in Blu-ray player, streaming video capability, and a PlayStation<sup>®</sup> Store with various content options, *see* <http://us.playstation.com/ps3/index.htm?SR=nav:playstation:playstation3:overview:ps&ref=http%3A%2F%2Fwww.sony.com%2Findex.php>. Nintendo’s Wii consoles also have streaming video and other online services. *See* <http://www.nintendo.com/wii/online>. *See also* <http://www.sezmi.com/what-is-sezmi/> and [http://store.apple.com/us/browse/home/shop\\_ipod/family/apple\\_tv?mco=MTcxNjEyOTE](http://store.apple.com/us/browse/home/shop_ipod/family/apple_tv?mco=MTcxNjEyOTE).

<sup>5/</sup> *Amazon Video on Demand*, <http://www.amazon.com/Video-On-Demand/B?IE=UTF8&NODE=16261631> (“Instantly watch hit movies and TV shows, in HD, on your computer or on your TV.”); *Apple - iTunes*, <http://www.apple.com/itunes/whats-on/> (“Visit the newly redesigned iTunes Store, where it’s even more fun to browse music, movies, TV shows, apps, podcasts, and more — anytime, day or night. You can shop at home on your Mac or PC, and iTunes automatically transfers your purchases to your iPod. Or you can shop the iTunes Store directly from your iPhone, iPod touch, or television via Apple TV. Any way you play it, entertainment goes wherever you go.”).

<sup>6/</sup> “BLOCKBUSTER On Demand<sup>®</sup> Presented by V CAST Video Brings Movies, Television Shows and More to DROID X,” PR Newswire, June 23, 2010, available at <http://www.prnewswire.com/news-releases/blockbuster-on-demand-presented-by-v-cast-video-brings-movies-television-shows-and-more-to-droid-x-96994314.html> (“Built to take advantage of the video capabilities and screen size of DROID X, BLOCKBUSTER On Demand will offer customers the hottest new release movies available to download the day they become available, alongside Blu-ray and DVD releases. DROID X customers will be able to rent or buy titles to watch on their smartphones and other BLOCKBUSTER On Demand devices.”); *Apple – iTunes – Take your media wherever you go*, <http://www.apple.com/itunes/what-is/everywhere.html> (allowing consumers to download movies and television shows from an iPhone or iPad).

also complement and expand viewers' video experience.<sup>7</sup> Likewise, mobile phones can access content optimized for that platform, such as CNN's mobile service which includes live streaming video of breaking news with location-based news, weather, and traffic.<sup>8/</sup>

As a complement to these new devices, platforms, and services, there is an increasing number of online video portals that are expanding the amount and type of high quality television content accessible through the Internet. While broadcast television content is widely available online through individual network websites, download services like iTunes, and aggregators such as Hulu, individual multichannel programmers and distributors are independently developing multiple portals to significantly expand the amount of multichannel video programming available online.<sup>9/</sup> For example, HBO GO, a new offering by Time Warner's Home Box Office subsidiary, gives subscribers "instant access to hundreds of titles including HBO Original Series, blockbuster movies, sports, and more," for display on their computers.<sup>10/</sup> As it becomes more broadly implemented through multiple portals, the industry-wide initiative to deliver TV everywhere will enable multichannel video consumers to access online the programming to which they already subscribe, most of which is not currently available on the Internet.

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<sup>7</sup> "HBO® App Now Available From App Store," Time Warner Press Release, available at <http://www.timewarner.com/corp/newsroom/pr/0,20812,1949484,00.html> (Dec. 22, 2009) ("the new HBO App is designed to provide iPhone and iPod touch users with an in-depth, interactive experience that includes a variety of branded entertainment including video clips and an interactive episode guide").

<sup>8/</sup> CNN.com, <http://www.cnn.com/mobile/iphone/> ("The power of CNN in your hands."). Consumers can also submit iReports to CNN directly from their phone using its photo and video capabilities. *Id.* "AT&T and LG Mobile Announce Latest AT&T Mobile TV Device; AT&T and LG Introduce the LG Vu Plus, One of 18 7.2 HSPA Capable Devices," PR NEWswire, May 24, 2010 ("AT&T and LG Electronics Mobilecomm U.S.A., Inc. (LG Mobile Phones) today announced the LG Vu Plus(TM), the latest AT&T Mobile TV-capable device...").

<sup>9/</sup> The concept to deliver TV everywhere is open and non-exclusive and is being independently implemented by a variety of programmers and distributors, including satellite, cable, and telco providers. For example, programmers including HBO, Turner Broadcasting System Inc., Scripps, Rainbow Media, and A&E Television have each announced plans to participate in various trials of the concept. Likewise, distributors including Verizon, DIRECTV, Dish Network, Time Warner Cable, Comcast, and Cablevision have separately indicated they are working on their own trials.

<sup>10/</sup> HBO GO, <http://www.hbogo.com/>. HBO GO is currently available to Verizon subscribers and will be rolled out to other distributors. "HBO and Verizon FiOS TV Introduce HBO GO," Time Warner Press Release, February 17, 2010, <http://www.timewarner.com/corp/newsroom/pr/0,20812,1964714,00.html>.

While there are significant developments online and with new distribution platforms, the MVPD platform remains a highly innovative space. In response to consumer demands, content creators and programmers are creating new services, features and functionalities like 3D programming.<sup>11/</sup> Through on-demand services, consumers can readily access content from many popular program networks, both basic and subscription, including individual programs and program series.<sup>12/</sup> Further, DVRs' organizational capabilities and time shifting functions provide flexibility in the linear television viewing experience.<sup>13/</sup> These types of innovations will continue to transform the MVPD platform as technology evolves and consumer expectations change with it.

It is important to underscore that content creators and programmers are essential partners with other participants in the video distribution chain in these myriad innovations. As exemplified above, content providers have strongly embraced new technologies and platforms, and are committed to driving innovation in new content services and features. Other examples of this commitment include: (1) Blu-ray DVDs with a free digital copy which permit the content to be downloaded to other devices;<sup>14/</sup> (2) BD-Live which enables consumers to access special

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<sup>11/</sup> ESPN <http://espn.go.com/3d/> (allowing consumers to watch sports in 3D); Whitney, Lance, "Cablevision to Offer 3D Content," CNET NEWS, March 24, 2010, available at [http://news.cnet.com/8301-1023\\_3-10470391-93.html](http://news.cnet.com/8301-1023_3-10470391-93.html) ("The cable provider announced Wednesday that it's using a 3D format called RealD to offer customers high-definition 3D programs. Licensed from 3D technology maker RealD, the format will let cable networks and providers send their content in 3D using Cablevision's current broadcast system and existing set-top boxes.").

<sup>12/</sup> "Ericsson Solution Centralizes Cox's Distribution of VOD Library," MARKETWIRE, May 11, 2010 ("The service provides access to movies and content from some of cable's most popular networks, as well as programming unique to the On DEMAND library. The library includes Cox's MyPrimetime® On DEMAND service offering anytime access to hundreds of episodes from more than 20 networks including ABC, NBC, USA, AMC, TBS, TNT, Comedy Central, Disney and more.").

<sup>13/</sup> "WD® Enables Consumers to Instantly Add More Recording Hours to DVRs With New My Book® AV DVR Expander," PR NEWSWIRE, June 22, 2010.

<sup>14/</sup> Musgrove, Mike, "Digital Copy: New DVDs and Blu-ray Discs Bundled With iPod-friendly Files," WASHINGTON POST, April 18, 2008, available at [http://voices.washingtonpost.com/posttech/2008/04/digital\\_copy\\_new\\_dvds\\_and\\_blur.html](http://voices.washingtonpost.com/posttech/2008/04/digital_copy_new_dvds_and_blur.html) ("Consumers are getting a little extra something with their movie purchases this spring, in a few cases. Pick up one of a few DVDs or Blu-ray discs and users will also get a digital file of the flick that they can easily throw onto their iPod or PDA."); "Warner Bros. Home Entertainment Announces Two Blu-Ray Packaging Innovations Offering Consumers More Value and Portability On the Movies They Want to See," Press

content and features through their internet-connected Blu-ray player;<sup>15/</sup> (3) multiple audio tracks in different languages for some multichannel and mobile services;<sup>16/</sup> and (4) viewer polling and interaction through social networking to complement the viewing experience.<sup>17/</sup>

In sum, consumers are experiencing an unprecedented level of choice and innovation in the reception, display, and enjoyment of video content. It is instructive that these innovations have largely been developed through inter-industry dialogue that promotes marketplace-based solutions. Where the marketplace is dynamic, and where consumers are being well served, government standardization is both unnecessary and could be counterproductive.

## **II. MARKETPLACE INNOVATION AND COLLABORATION AMONG INDUSTRY PARTICIPANTS, RATHER THAN REGULATION, CAN MORE READILY MEET CONSUMER DEMAND.**

Time Warner recognizes and appreciates the FCC's interest in addressing the goal of Section 629 of the Act to provide for commercial availability of consumer equipment to access multichannel video programming. As evidenced by the numerous innovations detailed above, however, the world today is quite different than it was in 1996 when Section 629 was enacted. These differences weigh in favor of a stronger role for marketplace innovation and inter-industry collaboration today in lieu of government standardization or regulation.

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Release, Dec. 16, 2009, <http://www.timewarner.com/corp/newsroom/pr/0,20812,1948456,00.html> (announcing Blu-ray disc, standard definition DVD, and digital copy sold all-in-one at no additional cost).

<sup>15/</sup> Warner Bros. BD-Live, <http://wblive.warnerbros.com/registration/faq.html> (“Warner Bros BD-Live is an interactive gateway to exclusive content, downloads, virtual screenings and Picture-in-Picture commentary to share and enjoy with friends and family.”)

<sup>16/</sup> “AT&T and ESPN Bring Fans Interactive Coverage of the 2010 FIFA World Cup(TM) Across Multiple Screens; Fans Can Watch All 64 Live Matches from ESPN on AT&T Mobile TV and MobiTV,” PR NEWSWIRE, June 1, 2010, available at <http://www.att.com/gen/press-room?pid=17990&cdvn=news&newsarticleid=30853> (“AT&T customers will get to score a hat trick for the 2010 FIFA World Cup(TM). AT&T is bringing fans more ways than any other provider to follow the 2010 FIFA World Cup(TM) with live and on demand coverage across the TV, online and mobile devices... including the ability to choose from six different languages.”).

<sup>17/</sup> See e.g., “Turner Classic Movies Launches Social Networking Site,” Press Release, June 10, 2009, <http://www.timewarner.com/corp/newsroom/pr/0,20812,1903855,00.html>.

Section 629 was enacted to provide for the commercial availability of MVPD set top boxes. At that time, multichannel video distribution had not yet fully experienced the dramatic changes that interactive services and digital technologies were to bring. The modest goals of Section 629 were thus thought to be more readily achievable.

Since then, however, multichannel video distribution innovation has exploded, largely due to interactive service offerings and digital technologies. In this type of dynamic environment, consumers have little interest in purchasing a set top box that cannot keep pace with current and future service offerings and features. The All-Vid proposal appears to acknowledge this fact by focusing on ‘smart video devices’ that could potentially access video content from multiple sources, including the Internet. While this broader focus is distinct from Section 629’s fundamental purpose, under any measure today consumers have a wide range of options for how and when they access video content, including innovative devices available for purchase at retail.

Given this rapidly changing technological landscape, the FCC can best promote pro-consumer innovations by encouraging cross-industry voluntary solutions by all constituencies in the video content creation and distribution chain (content, service and equipment) not by mandating technical standards that may limit innovation and are likely to be quickly outmoded.

### **III. A MANDATED “ALL-VID” STANDARD WOULD DISRUPT ONGOING INNOVATION IN VIDEO CONTENT CREATION AND DISTRIBUTION AND FRUSTRATE CONSUMER EXPECTATIONS**

#### **A. Content Creators and Programmers Invest Significantly to Meet Consumer Demands and Expectations.**

Content creators and programmers are deeply committed to, and invest heavily in, developing rich content that provides a compelling consumer experience. Certain proposals advanced in the *NOI* do not take this investment into account, could damage the integrity and quality of content that consumers value, and stifle innovation in the development of features and services that consumers want.

To understand the concerns of content producers and programmers in this proceeding, it is helpful to understand some of the dynamics involved in the content creation and programming businesses. First, the production and presentation of video content are not static. As noted above, content creators and program networks are constantly adding new features, enhancements, and services to video content to improve the consumer's experience, and are embracing new distribution models to offer content in ways that consumers want.

Second, consistency in content presentation is expected and greatly valued by consumers. Accordingly, content creators and programmers invest considerable time and resources to create a uniform consumer experience nationwide, regardless of the specific equipment or software used by consumers to view the content. This is vital to maintaining the value of their brands and to avoiding consumer confusion. The very essence of branded products is the creation of trust with consumers. Thus, consumers look to branded content services for certain subject matter, editorial and technical quality, and other features and enhancements.

Finally, content creators and programmers develop different models (such as subscription, rental, or purchase) for the distribution of their content to provide consumers with choices and flexibility in how and when they choose to access it. These models include the creation of different price points, time frames and distribution media, which are essential to sustain the continued creation of high value content that consumers enjoy. As video distribution becomes ever more dynamic in terms of content availability and portability in digital environments, the systems and technologies that implement these models need to be flexible, robust and renewable, and devices throughout the distribution chain must be able to recognize and honor their parameters.

**B. Standardization Proposals in the *NOI* Could Undermine Content Creator And Programmer Investments and Lead to Consumer Confusion and Disappointment.**

The “All-Vid” approach proposed in the *NOI* could dramatically harm the efforts and investments by content creators and programmers and lead to consumer confusion and disappointment in a number of respects. For example, the user interfaces in the All-Vid retail equipment may not respect the intended presentation of multichannel video content and in the process may damage the brands that consumers trust. Such interfaces could enable the comingling of legitimate content with unauthorized content from illegitimate online sources, giving illegal websites a veneer of authenticity that may confuse consumers. They could also significantly impact how consumers locate and select content sources, such as by promoting one particular source over another. Moreover, inappropriate content or commercials could be overlaid onto children’s programming or premium ad-free environments, leading to confusion and potential compliance issues with applicable law and/or contractual obligations.

In addition, to the extent that the user interface in All-Vid retail equipment could permit the disaggregation of program networks, it would fundamentally disrupt the editorial discretion and strategy that programmers exercise in the assembly of their content. This could ultimately undermine the ability of programmers to sustain the production of high quality content that consumers demand, and it could impair the brands that content producers and programmers work hard to create and sustain, and that consumers rely on and value.

Standardizing the output from MVPD networks through the gateway adapter, as suggested in the All-Vid proposal, could also prevent content creators and programmers from developing new distribution models, services, and functionalities that consumers demand. For example, certain technology standards proposed in the *NOI* would not support a robust set of important and emerging consumer uses and distribution models (*i.e.*, rentals, specific time or device parameters). The absence of these capabilities would effectively limit the options available to provide innovative services and functionalities for MVPD consumers. Similarly,

reliance on a single content protection technology significantly increases the likelihood that it will be compromised, which in turn creates unacceptable security risks and raises serious questions about renewability and revocation. Moreover, because the varying nature of security breaches may necessitate different remedies, reliance on a single remedy for all breaches would hinder the ability to respond in the most effective and efficient way.

Other standardization proposals in the *NOI* could seriously compromise the technical integrity of content offerings, which are important to all video services but which are critical to subscription services that require a per-program or per-month consumer purchase decision. The choice of ethernet and IP as the only physical connection and communication protocol, for example, has significant drawbacks. Ethernet is a low level protocol and there are many functions, such as navigation, content localization, and quality of service, which it cannot implement. Further, having devices use multiple encoding formats can also affect the video and audio quality of MVPD programming.

#### **IV. CONCLUSION**

Innovations in all segments of the video content creation and distribution chain are providing consumers with unprecedented choice in content services and features, delivery platforms, and display devices. This dynamic marketplace has developed without government regulation, and can be best promoted by inter-industry dialogue (including content creators,

programmers, distributors, and equipment manufacturers) to achieve marketplace-based solutions, not through mandated standards like those proposed in the *NOI*.

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