

**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)	
)	
Commercial Availability of Navigation Devices)	CS Docket No. 97-80
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	PP Docket No. 00-67
)	

To: The Commission

**JOINT COMMENTS OF DISH NETWORK L.L.C. AND
ECHOSTAR TECHNOLOGIES L.L.C.**

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I. INTRODUCTION AND SUMMARY

DISH Network L.L.C. (“DISH”) and EchoStar Technologies L.L.C. (“EchoStar”) submit these joint comments in response to the Commission’s *Notice of Inquiry* (“*NOI*”)¹ seeking comments on how to promote competition in the retail market for “smart video devices” that are compatible across all multichannel video programming distributors (“MVPDs”). DISH currently reaches more than 14.3 million subscribers nationwide for direct-to-home video programming, and partners with terrestrial partners to provide data and voice services. EchoStar has more than 25 years of experience in designing, developing, and distributing award-winning, advanced

¹ Video Device Competition, FCC 10-60, *Notice of Inquiry* (rel. April 21, 2010) (“*NOI*”).

television set-top boxes and related products for pay television providers, experience that has been enriched through the acquisition of Sling Media.

DISH and EchoStar share the Commission’s policy goals of spurring competition, innovation, and consumer choice in the market for set-top boxes. DISH and EchoStar support the Commission’s exploration of an AllVid regime. In exploring the AllVid concept, the Commission should be mindful not to undermine its own past achievement in spurring competition against cable operators in the MVPD market. Any new requirements should also be calculated to complement, rather than replace, market forces and industry standards initiatives. Moreover, before any AllVid rules can be adopted, the Commission must study carefully and appropriately address a number of technical and economic challenges raised by the *NOI*, some of which are specific to Direct Broadcast Satellite (“DBS”) and some of which apply across the industry.

II. AN APPROPRIATE ALLVID APPROACH MAY SPUR INNOVATION AND EXPAND CONSUMER CHOICE

In exploring the AllVid concept, the Commission should be mindful of the Hippocratic edict, “first, do no harm.” The relative infancy of the online content market means that the retail market for truly innovative devices that combine traditional MVPD viewing with online content is still young. As a result, it appears premature to characterize the state of the market for “smart” navigation devices as a failure. Early product offerings were less than compelling and demand was less than overwhelming. Prior ventures into the market, such as Windows Media Center, offered the consumer a cumbersome architecture (a living room computer as the navigation

device) with a less-than-competitive product and little online content. But as high quality, broadband-delivered video has become a viable offering, the market is responding favorably.²

Several retail manufacturers are already making available new devices that integrate MVPD offerings with broadband-enabled online video applications. EchoStar, together with its wholly owned subsidiary, Sling Media, has been leading the industry in introducing advanced video devices. The innovative Slingbox allows MVPD subscribers to place-shift their viewing experience. Using a subscriber's broadband connections at home and away, Slingbox was the first to unshackle the viewer from the living room television, while still allowing her to get the full benefit of her MVPD subscription. EchoStar has also recently introduced the ViP® 922 – the first high definition digital video recorder (“HD DVR”) that incorporates built-in place-shifting technology. In addition, DISH is partnering with Google to offer Google TV, an open platform that will integrate DISH programming with web content. DISH Network subscribers using Google TV will be able to search simultaneously for content across the DISH Network platform (including linear channels, DVR content, and video-on-demand), Internet offerings from online video programming distributors (“OVPDs”), and millions of other websites. Google and DISH plan to introduce the first Google TV box compatible with DISH programming in Fall 2010.

DISH and EchoStar support the Commission exploring how a correctly structured AllVid regime could supplement this emerging competition. Third-party devices that interface with an

² There are more than 6 million “iSTBs” – set-top boxes that retrieve online video for home viewing – deployed in the United States. See The Diffusion Group, *TDG Chart of the Week: So Where are Internet Set-Top Boxes Ending Up in the Home?* (July 12, 2010) (reviewing iSTB placement in the home); InStat, *Entertainment Revolution* (Feb. 2010) (estimating broadband users in the United States).

AllVid adapter, however, should add to the consumer's choices of video devices, and not supplant innovative offerings currently made available and being explored by MVPDs and their partners. The Commission should continue to permit MVPDs (and others) to produce and market integrated set-top boxes that can complement and compete with the AllVid option. This competition will drive the development of a cornucopia of service features available in either type of device. By leveraging the innovative offerings from both MVPDs and third parties, the Commission can expand consumer choice in the navigation device market.

III. THE COMMISSION SHOULD TAKE CARE TO STRUCTURE ANY ALLVID REQUIREMENTS TO ENCOURAGE ONGOING, ROBUST COMPETITION FROM DBS

A. Unless the Commission addresses the unique technical limitations of the DBS delivery model, an AllVid regime could undermine competition

As the Commission is aware, in just a little over a decade DBS has become cable's largest source of competition on a national level. DBS' success in constraining pay-TV prices and improving quality has depended on many factors, including several Commission rulings. The Commission's recognition of the nationwide character of the DBS service and its consequent decision to exempt DBS devices from the separable security requirement were important such rulings.³ The Commission's decisions on any AllVid requirements should continue to recognize the differences among MVPD service distribution models, including the unique challenges of the one-way DBS delivery model, in order to place all MVPDs on a level playing field.

DISH manages a highly reliable digital video distribution system for its subscribers, but its spectrum allotment lacks a subscriber return link. To the extent DISH subscribers wish to

³ Implementation of Section 304 of the Communications Act; Commercial Availability of Navigation Devices, 13 FCC Rcd. 14775 ¶ 64 (1998). \

communicate beyond their set-top box (for example, to request a pay-per-view movie or to verify such a request and tender payment), subscribers rely on a customer-provided, third-party return path, such as a telephone line or broadband Internet connection. In contrast, modern cable and telco systems operate with proprietary two-way functionality, using an active return path over the network of the MVPD itself. This one-way versus two-way dichotomy, coupled with the physical realities of video distribution over satellite, result in different needs for a DBS AllVid adapter versus a cable or telco AllVid adapter, and have implications for the smart video device as well.⁴ Any AllVid approach must recognize these differences and their implications and make allowances accordingly.

Critically, any AllVid requirements should not foreclose placing certain functionality and hardware, in addition to the tuning and security functions, in the AllVid adapter. Such functionality actually works to place DBS on a more level playing field with its two-way, less bandwidth-constrained cable and telco counterparts. For example, because of limitations in available satellite bandwidth, DISH takes advantage of intervals of bandwidth availability to “pre-load” or “push” popular, recent-release movie titles into a cache on subscribers’ DVRs. When a customer purchases one of these titles, the set-top box “unlocks” that cached movie for viewing. Under an AllVid scenario, DISH’s AllVid adapter would need to include a hard drive capable of performing this caching function for DISH’s content in a secure and controlled environment. Presumably, cable and telco AllVid adapters would not need such functionality.

⁴ For example, DISH uses QPSK and 8PSK radio frequency modulation distribution systems, whereas cable uses a family of QAM distribution systems. DISH mostly uses an MPEG-4/AVC compression system for its content, while cable mostly uses MPEG-2. DISH’s security requirements are also unique to the one-way, satellite delivery architecture. The over-the-air, one-way nature of DBS transmissions requires security approaches that are simply not needed in closed, two-way cable systems.

DISH cannot, however, accommodate every difference between DBS and two-way MVPD architectures in the DISH AllVid adapter. In order to ensure that smart video devices are truly “trans-MVPD” devices, the Commission will have to require certain functionality from the smart video devices themselves. The smart video device, for example, must support both MPEG-4 and Dolby Digital (AC-3) encoding (DISH’s HD video and audio content formats) as well as MPEG-2 audio and video in order to support both DBS and cable architectures. A requirement that DISH transcode its MPEG-4 signals in the DISH AllVid adapter would place DISH at a competitive disadvantage to cable because the complexity and cost of DISH’s AllVid adapters would be significantly higher than their cable counterparts. This would mean, in turn, that the consumer would have to pay more for DBS than for cable or that DBS operators would have to subsidize the offering to reflect the cost differential. In either case, the competitiveness of DBS would suffer in turn.

In addition, any DISH AllVid adapter must be able to “tunnel through” the smart video device to the consumer in order to facilitate certain critical functions unique to the DBS architecture. DISH subscribers and customer service representatives, for example, must be able to access diagnostics and trouble-shooting tools on the AllVid adapter through the smart video device, some of which require low latency and high responsiveness. The smart video device must also be able to support DISH’s business processes for processing orders and payment information over the subscriber’s third-party provided return path (a telephone line or broadband Internet connection) – again, a function unique to the DBS architecture. To address these needs the smart video device should either incorporate such functionality or support a remote user interface (“RUI”). Adoption of the Digital Living Network Alliance (“DLNA”) Guidelines for the applicable components of an AllVid regime, as discussed in Section IV.C, could address

some of these concerns because such Guidelines incorporate a basic web-page RUI protocol. It is true that the current DLNA-incorporated RUI is a simpler RUI than DISH requires for its applications that need low latency and high responsiveness. Nonetheless, the DLNA RUI is based on a set of standards that have options for a more robust RUI that could better serve DISH's needs.

B. Any smart video device must fairly display DISH metadata, and avoid discriminating among content sources

The DISH User Interface (“UI”) and Electronic Program Guide (“EPG”) are essential to the DISH Network experience. However, it appears that the Commission’s objective in this proceeding is to encourage development of smart video devices that present DISH programming and applications in a third party developer’s UI. If so, MVPDs likely would need to provide metadata describing the availability and timing of programming in a standard format for the smart video device to read and implement in the third party’s developer’s own UI. DISH and EchoStar are comfortable with this arrangement only if the smart video device, in turn, is required to accept, display, and act on the metadata provided by the MVPD without distortion, manipulation, or editing. DISH, for example, knows best what content is available on its network, how to access that content, and when.

The smart video device may also include functionality that displays third part metadata about the MVPD programming or that allows the consumer to augment the MVPD metadata with third-party information (such as an organization’s assessment of the family-friendliness of particular programming). DISH and EchoStar do not necessarily object to such functionality, as long as DISH’s metadata is displayed on a primary basis and there is a clear delineation of, and limits on, the responsibility for information gleaned from third-party sources. Moreover, the

DISH customer should always have the choice to configure the smart video device to display the full DISH UI and EPG. Every MVPD will have customers that do not want to be bothered or confused by the additional complexity of the smart video device, or who may simply prefer the MVPD interface. DISH's UI, for example, has a number of tools that enable a parent not only to "lock down" particular channels, but to block the appearance of those channels altogether in the EPG. A parent may choose to use DISH's particular EPG because of this, or other, competitive features.

In addition, for the consumer to reap the benefits of the comparative "shopping" among competing content sources enabled by the MVPD metadata pass-through, the smart video device cannot discriminate between content sources. By making their metadata available in a standard format, MVPDs are enabling the smart video device to perform a cross-platform search and compare and contrast elements of their offerings with those of their competitors (*e.g.*, a movie available on video-on-demand for \$4.99 versus a free, online offering). As the Commission has recognized, when a gateway device or access provider promotes or degrades certain content because of economic or other interests that are unrelated to device functionality or network performance, true competition among content providers is impeded, and the consumer ultimately loses.⁵ The principles of net neutrality are as important for the home network and for an AllVid regime as they are for broadband Internet access.⁶ The smart video device should therefore not block, slow, or degrade any content because of its source. This goes for both "linear" MVPD

⁵ See generally Preserving the Open Internet, *Notice of Inquiry*, FCC No. 09-93 (rel. Oct. 22, 2009).

⁶ See *Comments of DISH Network L.L.C.*, GN Docket No. 09-191, Preserving the Open Internet (filed Jan. 14, 2010).

channels and OVPD content and interactive applications. The consumer, and not the device manufacturer, should make the choice among competing sources.

IV. TO THE EXTENT THE COMMISSION PURSUES ALLVID, IT SHOULD AVOID OVER-REGULATING AND SHOULD FAVOR STANDARDS ON WHICH THE MARKET IS ALREADY CONVERGING

A. The consumer should drive the form of the adapter

The *NOI* asks whether the AllVid adapter should be a “set-back” device or take the form of a home gateway.⁷ DISH and EchoStar believe that the ultimate form, placement, and function of the AllVid adapter will depend on the needs of the consumer. Some consumers may want a simple AllVid adapter much like today’s standard set-top box. For these consumers, a single set-back device would be appropriate. Other consumers with more sophisticated home networks and more complex video viewing habits may have so many MVPDs and over-the-top content sources, viewing portals, and options throughout the home that multiple home gateway devices would best serve their needs. To the extent it adopts an AllVid mandate, the Commission should not predetermine either scenario. Consumer demand will drive the type and location of the adapter in the home, and the adapter’s place in the home network.

B. Existing standards for the emergency alert system, closed captioning, and parental controls are readily adaptable to an AllVid regime

The *NOI* asks whether existing standards for the emergency alert system (“EAS”), closed captioning, and parental controls can be readily adapted for use in the AllVid system, or whether new standards development is necessary.⁸ Existing standards for carrying EAS messages over the home network, including CEA 2035, can likely be adapted to an AllVid solution. The smart

⁷ *NOI* ¶ 25.

⁸ *Id.* ¶ 34.

video device should present any transmitted EAS messages to the consumer. Closed captioning encapsulated in MPEG video streams is a well-established technology under standards such as CEA-608 and CEA-708 and should be a part of the AllVid architecture. The smart video device should be required to display captions when they are provided as part of the video stream. Existing standards for parental controls, including ATSC A/65 and CEA-766, likely can also be adapted to an AllVid solution. In this respect, the Commission should be aware that MVPDs may have contracts with third parties from whom they obtain and pay for programming and ratings information. These contracts may restrict or limit the MVPD's ability to pass through such information to a third party device. To the extent the MVPD does pass through such program and ratings information, however, the smart video device should be required to include such information in conjunction with the MVPD programming.

C. The Commission should adopt the DLNA Guidelines for the applicable portions of any AllVid regime, with some modifications

Standards enable interoperability and encourage competition. The DLNA Guidelines are based on open standards and widely available industry specifications and are designed to enable interoperation among video navigation devices over a home network.⁹ More than 200 consumer electronics manufacturers are already members of DLNA, and over 6,000 devices have been certified as DLNA-compliant.¹⁰ DISH and EchoStar therefore recommend that the Commission largely base the home networking aspects of any AllVid regime on the DLNA Guidelines and their constituent standards. As the Guidelines evolve, the Commission should continue to monitor the scope of their appropriate application to any AllVid regime.

⁹ *Comments of the Digital Living Network Alliance*, GN Docket No. 09-51, National Broadband Plan Public Notice No. 27, at 1 (filed Dec. 21, 2009).

¹⁰ *Id.* at 5.

A key feature of the DLNA Guidelines is communication via Internet Protocol (“IP”), a well-supported and ubiquitous communications protocol suitable for any AllVid regime. Given the need to ensure compatibility between the AllVid adapter and the smart video device, some form of mandated physical layer is required, and Ethernet is the logical choice today. The Commission should not, however, foreclose alternative connections that the consumer may prefer (*e.g.*, WiFi, HomePlug,¹¹ or Multimedia over Coaxial Association connection (“MoCA”). So long as the AllVid adapter and the smart video device have the required Ethernet port, manufacturers should be free to include additional physical connections that support IP. Moreover, the Commission should set a time to revisit any mandatory Ethernet requirement to avoid the inefficient scenario in which obsolete functionality is maintained only because of out-of-date regulations.

The Commission does need to consider some limitations to the DLNA approach, particularly in the area of link security and content protection. Today, DISH Network uses its own proprietary security measures and protocols to protect the broadcast stream and enforce digital rights management (“DRM”) restrictions on certain content such as pay-per-view and video-on-demand programming (*e.g.*, content that is contractually required by programmers to be viewable only for a set timeframe). DISH recognizes that if DISH content is to be transmitted through an AllVid architecture, however, the industry must converge on a common link and DRM protection scheme. For link security between devices to protect commercial content, the DLNA Guidelines incorporate digital transmission content protection over IP (“DTCP-IP”).¹² DTCP-IP is an appropriate base for link security between devices in an AllVid regime. DTCP-IP

¹¹ HomePlug allows the consumer to use home electrical cabling to network devices in the home. *See* <http://www.homeplug.org/home/>.

¹² *NOI* ¶ 28.

does not address, however, the communication and enforcement of DRM restrictions. Although DLNA has made developing guidelines for DRM technology interoperability a focus of current and future efforts, the association has yet to settle on such complete DRM guidelines.¹³ In any AllVid regime incorporating the DLNA Guidelines, the Commission would have to augment or modify the DLNA approach if the DLNA Guidelines themselves have not yet incorporated acceptable DRM standards.

In addition, there is a tension between unqualified acceptance of all the terms required by DCTP's administrator, the Digital Technology Licensing Administrator ("DTLA"), and an embrace of innovation and end user creativity. Recent changes to the DTLA Adopter Agreement require DTCP-certified devices to block any analog output of content marked with the "Analog Sunset Token" after December 31, 2013.¹⁴ This "analog sunset" effectively precludes the consumer from engaging in fair use of content so-marked that is transferred to the DTCP-compliant device. Newly innovative products such as Slingbox, which merely place-shifts a subscriber's already paid-for content, may be foreclosed or significantly hampered. In this context, the Commission should consider appropriate exceptions to the analog sunset. Similarly, DTLA is considering "watermarking" requirements that may introduce additional restrictions on content use and treatment. The Commission should monitor the "watermarking" development and any further changes to the Adopter Agreement to ensure that their effect is consistent with, and does not prevent, legitimate consumer fair use of content.

¹³ See Digital Living Network Alliance, *Digital Rights Management/Content Protection*, at http://www.dlna.org/industry/why_dlna/key_components/drm/.

¹⁴ See Digital Technology Licensing Administrator, *DTLA Adopter Agreement B-12 – B-13*, available at http://www.dtcp.com/documents/licensing/DTLA_Adopter_Agreement.pdf.

The Commission also should consider the scenario in which the DTCP technology is compromised and must be replaced. Replacing an industry consensus standard in a cost-effective, timely, and efficient manner would be a daunting challenge. The Commission should therefore consider approaches that will minimize both the incentive and ability to hack DTCP, including by applying DTCP only to such content as was encrypted in its original transmission.

V. OTHER OUTSTANDING ECONOMIC, LEGAL, AND BUSINESS ISSUES MUST BE ADDRESSED

A. The Commission must consider the economic implications of an AllVid regime

There are inevitable economic implications to the AllVid approach. By separating out the proprietary and nonproprietary set-top box functions into two devices – the AllVid adapter and the smart video device – cost is inevitably added to the system. Two different parties must manufacture two distinct devices, both of which consume physical resources in their manufacture, shipment, and operation (*e.g.*, fuel for shipment and electricity for manufacturing and in-home operation). Each device must perform the additional function of communicating with the other. An AllVid regime cannot be realized without this additional cost, at least in the near term. Whether this cost and attendant consumer welfare loss can be recouped through enhanced competitiveness in the market and corresponding consumer welfare gain is difficult to predict and even more difficult to quantify. Before venturing into the development of AllVid mandates, DISH and EchoStar urge the Commission to study these costs (including retail and power) and undertake a careful assessment of the balance between the cost and benefit of an AllVid regime.

B. Manufacturers of smart video devices face potential legal complications in obtaining access to necessary intellectual property rights

The *NOI* seeks comment on intellectual property issues related to the AllVid concept.¹⁵

Manufacturers and providers of smart video devices likely will need licenses from patent holders in order to use MPEG and Dolby Digital (AC-3) and to display certain EPGs, for example. It is unclear whether the Commission has the authority to mandate reasonable and nondiscriminatory license terms for the patents and technology implicated for an AllVid regime. Intellectual property issues may thus create a barrier to entry for new third parties and limit the availability of smart video devices that provide the requisite functionality to accomplish the Commission's goals, a risk that certainly needs to be monitored.

C. The Commission should recognize the complexities of an AllVid regime that requires support and cooperation from multiple parties in order to reap benefits for the consumer

An AllVid regime that reaps benefits for the consumer incorporates contributions from multiple parties, including MVPDs, consumer electronics ("CE") manufacturers, and even retail CE distributors. Some of these contributions are obvious. The MVPDs and CE manufacturers must agree on standards, the MVPD must design, manufacture, and make available an AllVid adapter, and the CE manufacturers must do the same for the smart video device. Other contributions are equally important, but not as readily evident. For example, with multiple, active devices between the programming source and the consumer experience, the CE manufacturers and the MVPDs must offer a seamless customer support experience. The consumer will not care whether an apparent service failure is caused by the AllVid adapter or the smart video device. If a DISH subscriber cannot receive her DISH service, regardless of the

¹⁵ *NOI* ¶ 32.

cause, the subscriber will look to DISH to resolve the issue.¹⁶ Only robust customer support by both the MVPDs and the CE manufacturers, most likely on a 24x7 basis and with collaborative incident resolution protocols, would preserve the consumer experience.

Furthermore, the Commission's goal of spurring competition in the retail navigation device market will come to naught if the consumer lacks robust access to competing devices. It is not unusual for CE distributors, including leading retail electronics stores, to sign exclusive marketing and distribution agreements with CE manufacturers; competing devices are then foreclosed from some of the most popular and effective avenues of CE distribution. These multi-party complexities are magnified by the fact that the Commission's jurisdiction over the different players varies widely. As the Commission explores the AllVid concept, it should more fully consider how these complexities might be addressed in order to ensure that the consumer would reap the anticipated benefits of any AllVid requirements.

¹⁶ See, e.g., *Comments of DIRECTV, Inc.*, GN Docket No. 09-51, National Broadband Plan Public Notice No. 30, at 14 (filed Jan. 27, 2010) (describing the challenges of customer support in an environment using third-party set-top boxes).

VI. CONCLUSION

DISH and EchoStar support the Commission's exploration of an AllVid regime, so long as its pursuit is taken with suitable caution and consideration for the competitiveness and innovation that currently exist in the market.

Respectfully submitted,

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