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

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| 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 |

# **JOINT REPLY COMMENTS OF PROGRAM NETWORKS**

The undersigned program networks ("Program Networks")[1] hereby submit these reply comments in response to (i) the *Notice of Inquiry* ("*NOI*") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding,[2] and (ii) the initial comments submitted by various parties on July 12, 2010.

The Program Networks appreciate the Commission's interest in implementing Section 629 of the Communications Act[3] to provide for commercial availability of consumer equipment

[1] The Program Networks are the networks operated or represented by CBS Corporation, Discovery Communications, LLC, NBC Universal, Inc., News Corporation, Time Warner Inc., Viacom Inc, and The Walt Disney Company, Inc. A list of the networks is set forth in Attachment A. In addition, much of the programming on the linear channels of the Program Networks is also offered as branded, on demand content.

[2] *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*").

[3] *See* 47 USC § 549.

to access multichannel video programming. We also strongly share the Commission's goal of promoting innovation and choice for consumers in their content viewing opportunities. Indeed, the record in this proceeding already reflects the fact that today consumers have an unprecedented and growing array of options available to them – including devices, services, and platforms – for accessing and experiencing video content.[4] Each of our companies is actively embracing these new opportunities, and is committed to providing consumers with rich, high-quality content. We are concerned, however, that mandatory government standards to create an "AllVid" system will disrupt this dynamic environment by stifling innovation and investment, frustrating consumers' expectations regarding the presentation and reliability of content, and providing inadequate content security. We strongly encourage the Commission to instead pursue voluntary, marketplace-based solutions to fulfill Section 629's targeted goal.[5]

## I. GOVERNMENT-MANDATED "ALL-VID" STANDARDS COULD NEGATIVELY AFFECT THE CREATION AND DISTRIBUTION OF HIGH QUALITY VIDEO CONTENT AND SERVICES

The Program Networks are concerned that proposals in the *NOI* to adopt mandatory government standards will negatively affect the creation and distribution of high quality video content in a number of ways. These proposals could not only diminish investment and innovation by program networks in new video services, features, and technologies, their effect on content presentation and security could also significantly impair the consumer experience. Our concerns are more fully detailed below.

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[4] *See* Cablevision Systems Corporation Comments at 11-17; NCTA Comments at 6-18; Telecommunications Industry Association Comments at 3-5; and Time Warner Inc. Comments at 2-6.

[5] Section 629 provides that "[t]he Commission shall, in 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 programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor." 47 USC § 549(a).

### A. Investment and Innovation

Several commenters have encouraged the Commission to promote innovation by standardizing the output from MVPD networks to facilitate greater flexibility for device manufacturers that produce equipment which receive MVPD content.[6] This perspective, however, does not take proper account of the investment and innovation that programmers and content creators engage in to provide consumers with compelling video experiences. Indeed, video distribution services are not static – programmers and content creators consistently invest in the creation of new services, features, and enhancements, such as 3D networks and program interactivity, made possible by advances in technology pioneered by program networks and their partners. Standardizing the output from MVPD networks would essentially freeze the status quo, thereby reducing the incentive to innovate and stifling the development of new features and services that consumers demand. We also share concerns raised by commenters that this proposal conflicts with the scope of the Commission's authority under Section 629.[7]

Moreover, the specific technology standards proposed in the *NOI* do not support a wide range of consumer uses and distribution models, which would further limit options available to MVPD subscribers. For instance, DTCP supports only a limited set of existing consumer uses.[8] While DTLA indicates that DTCP could be modified to support new uses and models over time, such modifications may not completely support all the specific uses and models developed by individual programmers, who would lack any competitive alternatives to meet those needs if a government-mandated standard were established. In addition, Ethernet cannot support functions

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[6] *See* Sony Electronics Inc. Comments at 8-9; Consumer Electronics Association Comments at 9.

[7] *See* NCTA Comments at 47-52.

[8] DTLA Comments at 9-10.

such as navigation, content localization, and quality of service.[9] In light of these considerations, the Commission must take care to avoid disrupting the investment and innovation that are actively occurring at all points of the video distribution chain, including by program networks and their partners. Certainly, the Commission's actions should not foreclose advancements by any particular sector.

### B. Content Presentation

Content presentation is another area of which the Commission must be mindful. When it comes to television, consumers expect and value a consistently high level of content presentation in video programming, and look to particular programmers and brands to guide their viewing choices. Branding is a core component of the value of programming to consumers and distributors, and how a programmer reaches and informs consumers about its content and services. Indeed, consumers and distributors associate a given programmer with, among other things, specific types of content (such as reality, talk, drama, comedy, sports, etc.), features, and advertising, which in turn engender viewer loyalty. Therefore, to avoid consumer confusion and build confidence in our respective brands, the Program Networks each work hard in their individual capacities as well as in appropriate inter-industry settings to create distinctive, recognizable brands while ensuring a consistently high-quality consumer experience nationwide.

The All-Vid approach proposed in the *NOI* will undermine existing and continuing investments in content presentation by programmers, thus serving to frustrate and disappoint consumers – rather than benefit them – as content presentation in such an environment suffers. For example, the user interfaces in the All-Vid retail equipment could alter or remove the consistent look, feel, and branding of program networks. They could also allow inappropriate

[9] Time Warner Inc. Comments at 10.

content or advertising to be overlaid onto MVPD content, particularly children's or family programming. The juxtaposition of illegitimate online sources with authorized content could confuse or deceive consumers, particularly now that so many websites trafficking in unauthorized video content have a sophisticated look and feel. Search functionalities could also inadvertently promote illegitimate content sources over legitimate ones, rank content sources based on paid key word 'buys' by entities unrelated to programmers, abrogate contractual provisions governing channel placement, or otherwise skew how consumers identify and choose which content they watch. In sum, the All-Vid concept presents significant risks of adversely affecting the consumer experience and undermining the sources that consumers trust – the recognized brands of the Program Networks – through failure to respect the presentation of multichannel video content.

The user interface in the proposed All-Vid retail equipment also presents another significant risk – it could permit the disaggregation of program networks.[10] This would inherently undermine: (1) the editorial discretion and First Amendment rights of programmers in how they select, license, package, and distribute content, and (2) programmers' ability to support the continued production and acquisition of high quality content. The Commission must not, as a matter of both law and public policy, endorse such an outcome.

### C. Content Security

In digital environments, content security is of the utmost importance. Security systems and technologies serve two functions – they enable a wide range of video content distribution

[10] By this, we mean that a linear channel or program service could be broken up and disassembled into discrete parts, such as into separate programs or promotions or interstitials.

models,[11] and guard against unauthorized reproduction and redistribution. These different business models provide consumers with more choice and flexibility in how they access video content, and are essential to sustain the ongoing creation of high-quality video content, provided that devices throughout the distribution chain can respond to and give effect to their parameters.

While there are many tools and technologies available today which provide content security in different types of digital environments, not all of these are optimized for video content, especially when high definition signals are at issue. Even among those suitable for video content, many technologies were designed with specific, limited purposes in mind (*i.e.*, link protection as content moves from one device to another). As such, any one security tool or technology is unlikely to support a full range of consumer uses and distribution models for video content, or to provide comprehensive protection. Reliance on a single technology also creates unacceptable security risks as it significantly increases the likelihood that it will be subject to repeated compromises.

On this basis, we are concerned with the *NOI*'s proposal to standardize one content protection technology for use in an All-Vid model. Content security issues are best left to multiple, private, and voluntary solutions which are inherently more flexible and able to deal with advances in technology more adroitly than government regulation. Indeed, the Commission should decline calls to undermine private contractual and licensing arrangements designed to ensure content security.[12]

[11] These can include subscription, rental or purchase models, with varying time frames, price points, portability options, geographic locations, and distribution platforms.

[12] For example, the Commission should avoid calls to interfere in security-related contractual issues between programmers and distributors. *See e.g.*, Massillon Cable TV, Inc. Comments.

## II. CONCLUSION

In light of the dynamic marketplace for video content creation and distribution today, and the potential disruption that government regulation or standardization could cause, the Program Networks encourage the Commission to explore voluntary, marketplace-based solutions to fulfill Section 629's goal.

Respectfully submitted,

Program Networks

By: /s/ Anne Lucey
Anne Lucey
SVP, Regulatory Policy
CBS Corporation
601 Pennsylvania Ave., NW
Suite 540
Washington, DC 20004

/s/ Alexa Verveer
Alexa Verveer
SVP, Public Policy & Government Relations
Discovery Communications, LLC
One Discovery Place
Silver Spring, MD 20910

/s/ Margaret L. Tobey
Margaret L. Tobey
VP, Regulatory Affairs
NBC Universal, Inc.
1299 Pennsylvania Avenue, NW
Washington, DC 20004

/s/ Maureen O'Connell
Maureen O'Connell
SVP, Regulatory & Government Affairs
News Corporation
444 North Capitol Street, NW, Ste. 740
Washington, DC 20001

/s/ Susan A. Mort
Susan A. Mort
Senior Counsel
Time Warner Inc.
800 Connecticut Ave., NW, Ste. 800
Washington, DC 20006

/s/ Susan Fox
Susan Fox
Vice President, Government Relations
The Walt Disney Company
425 3rd St., SW, Ste. 1100
Washington, DC 20024

/s/ Keith Murphy
Keith Murphy
Vice President, Government Relations &
Regulatory Counsel
Viacom Inc.
1501 M Street, NW, Ste. 1100
Washington, DC 20005

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# ATTACHMENT A

**CBS Corporation**
CBS Corporation
The CBS Television Network
The CW (a joint venture with Warner Bros. Entertainment)
CBS College Sports Network
Showtime
Showtime 2
Showtime Showcase
Showtime Extreme
Showtime Beyond
Showtime Next
Showtime Women
Showtime Family Zone
Showtime HD
Showtime 2 HD
Showtime on Demand
The Movie Channel
The Movie Channel Xtra
The Movie Channel HD
The Movie Channel on Demand
Flix Flix on Demand
Smithsonian Channel (a joint venture with the Smithsonian Institution)

**Discovery Communications, LLC**
Discovery Channel
TLC
Animal Planet
Science Channel
Investigation Discovery
Discovery Health (launching as The Oprah Winfrey Network 01/01/11, joint venture with Harpo Productions, Inc.)
Discovery Kids (launching as The Hub 10/10/10, joint venture with Hasbro Inc.)
Military Channel
Planet Green
FitTV
HD Theater
Discovery en Espanol
Discovery Familia

**NBC Universal, Inc.**
Bravo
Chiller
CNBC
CNBC World
MSNBC
Mun2
Oxygen

Sleuth
Syfy
Universal HD
USA Network

**News Corp.**

*Fox Broadcasting Company*
FOX Broadcast Network

*Fox Networks Group, Inc.*
FX
FX HD
National Geographic Channel
National Geographic Channel HD
Nat Geo Wild
Nat Geo Wild HD
Speed
Speed HD
Fox Reality Channel
Fox Movie Channel
Fox Movie Channel HD
Fuel TV
Fox Soccer Channel
Fox Soccer Channel HD
Fox Soccer Plus
Fox Soccer Plus HD
Fox Sports en Español
Fuel TV
Fuel TV HD
Big Ten Network
Big Ten Network HD
Fox College Sports (3 regional channels)
Fox Sports Networks (12 regional networks plus numerous sub-regional feeds)
Fox Sports Networks HD (11 regional networks plus numerous sub-regional feeds)

**Time Warner Inc.**

*Home Box Office, Inc.*
HBO (Main Channel)
HBO Latino
HBO2
HBO Signature
HBO Family
HBO Comedy
HBO Zone
HBO On Demand
Cinemax (Main Channel)
MoreMax
Action Max
ThrillerMax

5StarMax
Wmax
OuterMax
@Max
Cinemax On Demand

*Turner Broadcasting System, Inc.*
Cable News Network
CNN en Espanol
CNN International
HLN
TBS
Turner Network Television
Turner Classic Movies
Cartoon Network
Adult Swim
Boomerang
truTV

**<u>Viacom Inc.</u>**

*MTV Networks*
Nickelodeon
Nick at Nite
TeenNick
NickToons
Nick Jr.
MTV
MTV 2
mtvU
VH1
VH1 Classic
Epix
Palladia
CMT
Logo
Comedy Central
Spike TV
TV Land

*BET Networks*
BET
Centric
BET Gospel
BET Hip Hop

**<u>The Walt Disney Company</u>**
ABC Family
ABC News Now
Disney Channel
Disney XD

ESPN
ESPN2
ESPN 3D
ESPN HD
ESPN Classic
ESPN Deportes
ESPN U
SOAPnet
ABC Television Network
ABC Television Stations