Public Knowledge

September 1, 2010
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RE: Notice of Ex Parte presentation in MB Docket No. 10-91, CS Docket No. 97-80, PP Docket No. 00-67, & GN Docket No. 09-191

Dear Ms. Dortch:

Yesterday, John Bergmayer of Public Knowledge (PK), and Dan Simpkins and Chuck Gritton of Hillcrest Laboratories met with Kris Monteith, Steve Broeckaert, Alison Neplokh, Mary Beth Murphy, Jeffrey Neumann, and Nancy Murphy of the Media Bureau.

Hillcrest provided information on two topics. First, Hillcrest informed the Bureau of certain anti-competitive practices in the online video space, particularly Hulu.com's blocking of Hillcrest's Kylo browser. Kylo is a fully-featured web browser that Hillcrest designed to be used on a PC that is connected to a television, in conjunction with Hillcrest's gesture-based interaction technology, called Freespace®, which it licenses to other companies and sells to consumers directly with the Loop remote. Kylo does not modify the appearance of web pages in any way, and fully complies with Hulu's terms of service. Hillcrest believes that Kylo is targeted for blocking because it markets Kylo as a product specifically designed to bring the web to TV, and noted the tension between the Commission's Internet openness principles and policies that seek to restrict consumer device and software choice.

Hillcrest then gave its views on the AllVid proceeding. It noted that its gesture-based technology is not supported by tru2way, which requires remote controls with particular buttons, and that barriers to entry in the set-top box market have limited its business opportunities. Based on its business experience, Hillcrest knows that consumers are interested in having a superior navigation experience on the TV, and that superior interfaces lead to increased usage. Thus, the ability to easily access web content on the TV could increase the demand for (and deployment of) broadband technology. Innovators like Hillcrest play an important role in driving the adoption of new technologies. While MVPDs have an incentive to provide a "one size fits all" solution, competition in navigation devices would allow new entrants to target early adopters, who would then popularize new technologies to less tech-savvy consumers. Experience in the smartphone market shows that this model of technological adoption works, and that increased competition and technological sophistication in equipment markets does not lead to unreasonable network customer support costs. Hillcrest further noted that consumers do not like to have to switch "input modes" to access different sources of content, and prefer a unified interface.

It was noted that some parties in the AllVid proceeding feel that bringing the openness of the web to the TV could drive consumers to unlawful sources of content, and that this is a possible reason why content companies, who control Hulu, would block Kylo (even though non-TV optimized browsers, used on a PC attached to a TV, can be used to access sites like Hulu). But Kylo steers consumers to lawful sources of content with its directory service, and its full-screen interface makes it impossible to view lawful and unlawful sources of content "side by side." In any event, given the clear market trend for Internet on TV, crippling AllVid by

requiring that AllVid devices not provide web browsers would hamper AllVid without deterring unlawful activity online.

PK noted that broader video marketplace developments, even ones not squarely in the FCC's traditional jurisdiction, should inform the Commission's regulatory direction, e.g. with regard to program access rules. PK then observed that some content companies are hesitant to support over-the-top video for fear of the disruption it can bring, and that cable carriage fees are not transparent to consumers—thus obscuring to consumers the source of the high cost of MVPD service. PK argued that drawing distinctions between "TV sets" and "computers" is increasingly irrational, given that PCs can so easily be attached to TVs, and that the two screens are rapidly converging in terms of display technology, resolution, and even size. Indeed, many viewers simply use computers as their primary video-watching device. PK further argued that content licensing arrangements can be structured anticompetitive: there is no immunity to antitrust or competition law for licensing agreements. Finally, while PK does not believe that anticompetitive actions by non-ISPs raise net neutrality concerns, such actions merit scrutiny by the appropriate agencies.

The meeting concluded with a demonstration of the Kylo browser and Loop remote control.

Sincerely,

_____/s/_____

John Bergmayer
Staff Attorney
Public Knowledge

CC:
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Alison Neplokh
Mary Beth Murphy
Brendan Murray
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