WILTSHIRE & GRANNIS LLP

October 1, 2010

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *MB Docket No. 10-91, CS Docket No. 97-80, and PP Docket No. 00-67*

Dear Ms. Dortch:

This is to inform you that Stacy Fuller of DIRECTV, Gerry Waldron of Covington & Burling LLP, and undersigned counsel met today with Rosemary Harold, Legal Advisor for Media for Commissioner McDowell, to discuss the above referenced proceedings. The DIRECTV representatives provided the attached summary of DIRECTV's position on the AllVid Notice of Inquiry, which reflects the content of their presentation.

Respectfully submitted,

/s/

William M. Wiltshire
Counsel for DIRECTV

Attachment

cc: Rosemary Harold

THE ALLVID PROPOSAL WOULD STYMIE ONGOING INNOVATION AND HARM CONSUMERS AND COMPETITION

- After years of struggling to implement its CableCARD regime, the Commission now seeks to encourage "smart devices" that would, through the use of an "AllVid" adapter or gateway, function with all MVPD platforms and be able to access and navigate a full suite of MVPD and non-MVPD video content.

- Supporters of this proposal go so far as to seek complete disaggregation of the MVPD service, in which manufacturers of downstream devices could pick and choose among an MVPD's features to create their own offerings.

- DIRECTV is gravely concerned that such an AllVid mandate would:

    - interfere with market-based initiatives already in progress;
    - constrain ongoing development and delivery of innovative devices and services;
    - place DBS at a competitive disadvantage to cable; and
    - harm consumers.

I. The Market for Video Devices is Already Dynamic and Innovative

- While the FCC is trying to fulfill the mandate of Section 629, it makes no sense to fight a 1990s battle in 2010. Innovation has leapfrogged potential impediments, and the industry stands at the dawn of a new era of home gateway devices and Internet connectivity through our televisions. Any government-mandated technological requirements will only stymie this innovation.

- Innovation is occurring now.

    - There is now a wealth of innovative devices—from AppleTV to Boxee to Roku—with which consumers can access all variety of content.

        - Xbox LIVE, the Microsoft service that features HD movies and TV shows and streaming movies from Netflix, has more than 20 million subscribers—more than any DBS provider. Sony and Nintendo offer competing devices and services.

        - Netflix recently acquired exclusive online streaming rights to first-run films distributed by Relativity Media and Epix (including Paramount, Lions Gate, and MGM productions). And this month Blockbuster filed for bankruptcy, partly due to the success of Netflix streaming video.

        - AppleTV is rolling out a new player and renting Fox and ABC network shows for $0.99.

        - Amazon also recently acquired the rights to stream Fox and ABC network programming online for $0.99 per show.

        - NBCU just announced a deal under which some of its cable programs will be available through Netflix's streaming service.

    - It is worth noting that, under the language used in the disability legislation passed this summer by the House and Senate, Nintendo, PlayStation, Xbox and similar devices are going to be regulated in the same manner as STBs when it comes to closed captioning and video description. So in 2010, Congress clearly sees them the same way consumers see them: part of the vibrant market for devices used to access video.

    - STBs themselves are increasingly advanced. DIRECTV's, for example, are extraordinarily sophisticated devices with technology that allows DIRECTV's one-way network to provide services comparable to those of its two-way competitors. Moreover, they are robust enough for DIRECTV to constantly add new features—75 in the 15 months after the Commission launched its National Broadband Plan alone.

    - Efforts are underway to better integrate MVPD and non-MVPD content.

        - The industry is making tremendous progress: the industry standard developed by the RVU Alliance, building on DLNA technology, will allow *precisely* the "shopping mall" of video content envisioned by Chairman Genachowski.

        - *But,* as with a physical mall, the "look and feel" of the "stores" themselves will be determined by the service provider, not the mall owner.

        - Thus, Netflix will look like Netflix, YouTube will look like YouTube, and DIRECTV will look like DIRECTV. That is a good thing. The Commission needs to focus on promoting competition among content providers *and* among device providers.

II. The AllVid Proposal Underestimates Implementation Complexity

- Although the Commission envisions AllVid in place by December 2012, the hard-won experience of the RVU Alliance and other industry-led efforts demonstrates that implementation would take far longer – and the proposed use of some ready-made standards does not diminish the need to develop others which may be even harder to agree upon.

- For example, the Commission proposes for AllVid adapters to use IP to transmit to downstream smart devices. But this does not answer the question of how smart devices can understand and interpret the network data (or metadata) sent to them.

    - It is like deciding that two people will communicate by speaking to one another, but failing to decide what language they will use to do so.

- Unless the Commission designates such a "language" through the development of common protocols—a process that would take years even in the best of circumstances (and which would necessarily result in winners and losers defined by Commission rules rather than by the market)—smart devices simply will not work.

- Similarly, the Commission's proposed authentication protocol (DTCP-IP) ensures that content will be delivered securely to authenticated devices over an IP communications link, but does not support certain management capabilities currently used in MVPD devices and may not support future initiatives either. This, too, would require the development of new protocols.

- AllVid supporters barely acknowledge these problems. Some suggest that DLNA standards can be imported wholesale to address these issues. But DLNA standards have not yet been adopted for this application, and cannot be "plugged in" as supporters suggest.

III. Mandatory Disaggregation and Limitations AllVid Adaptor Capabilities Would Have Unintended – and Negative – Consequences.

- Even if the Commission were able to resolve the incomplete aspects of its proposal noted above, mandatory disaggregation of intellectual property and limitations on the capabilities allowed for the AllVid Adaptor would *still* have significant unintended consequences.

- ***It would place MVPDs in legal jeopardy*** because they do not have the license from programmers, who take great pride (and legal investment) in the "look and feel" of how their content is presented, to allow third parties to display content as those parties see fit.

  - To take just one example, a manufacturer (*e.g.,* Sony) could make a device that gave more favorable placement to VOD content offered by a particular content provider (*e.g.,* Sony Pictures). Certain DIRECTV contracts prohibit such discriminatory treatment, yet under an AllVid mandate, DIRECTV would have no way to prevent this.

  - Moreover, MVPDs are not free to distribute the metadata that contains critical programming information, since MVPDs purchase this information from third party vendors. There is no justification to make MVPDs the agent of CE manufacturers and require them to obtain universal rights to the metadata.

- ***It would disadvantage satellite compared to cable***.

  - DBS doesn't just transmit "plain vanilla" programming. It is our innovative features and customer services that allow us to compete with cable's triple play bundle. The FCC's proposal would reduce MVPDs to "dumb pipes" and dictate that all the innovation should be driven by the CE industry. Depriving DBS providers of their advantage would make cable's triple play more inviting, thus tilting the competitive playing field to cable.

- Satellite operators rely on the STB to provide services such as VOD, Common Sense Media Ratings, NFL Super Fan, YouTube searches, and an interactive programming guide. As mentioned earlier, DIRECTV downloaded 75 new features to our STBs in the last 15 months since the FCC launched its National Broadband Plan. Were the Commission to prohibit AllVid adapters from having more intelligence and storage in the box, such features would be lost.

- ***It would result in navigation devices of varying functionality***. This would be unfair to and confusing for subscribers who, after all, pay MVPDs to receive *all* of their features. It would be impossible to tell consumers what future services they might not be able to receive from their MVPD using third-party equipment. It would also greatly reduce an MVPD's incentives to roll out new features that might not be available to a significant number of subscribers with third-party devices.

- ***It would degrade customer service***. Today, customers know to call DIRECTV with a problem, and DIRECTV is familiar with all aspects of its viewing experience. If smart devices each offer their own user interface and their own suite of functions, customer service becomes far more difficult and clear lines of responsibility are lost.

- ***It would lock in current technology*** and thereby limit flexibility to incorporate future advances.

- ***It would complicate intellectual property issues***. By *requiring* the use of particular technologies, Commission-mandated standards invite opportunistic behavior by those who claim the rights to such technologies.

- ***It would likely stymie, and would certainly delay, market-driven solutions*** such as RVU, which otherwise will be developed and deployed based on consumer demand.