

**Robert S. Schwartz**

Attorney at Law

202-204-3508

rschwartz@constantinecannon.com

January 26, 2011

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

Re: Video Device Competition, MB Docket No. 10-91; Commercial Availability of Navigation Devices, CS Docket No. 97-80; Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Docket No. 00-67

Dear Ms. Dortch:

On January 24, 2011, James Morgan of Sony Electronics, Megan Stull of Google, John Bergmayer of Public Knowledge, Chris Riley of Free Press, and Matt Wood of Media Access Project, accompanied by the undersigned as counsel to the Consumer Electronics Association (CEA) and the Consumer Electronics Retailers Coalition (CERC), met with Marilyn Sonn, Legal Advisor to Chairman Genachowski, and Chief Bill Lake, Associate Chief Nancy Murphy, Steven Broeckaert, and Brendan Murray, all of the Media Bureau.

The purpose of the meeting was to discuss, from the perspectives of these leading corporate, public interest, and association representatives, the necessity and potential of an expeditious AllVid rulemaking to spur technological, standards, and device innovation, and to achieve competition in the marketplace as required by law and envisioned in the National Broadband Plan. The participants stressed that the benefits of innovation and competition can be contemplated and foreseen but never precisely predicted, and that most characteristically they are underestimated, not over-estimated. A forward-looking outcome in the AllVid proceeding has the proximate potential to spur innovation and open U.S. markets.

The participants stressed that technologies are at hand to produce a standard, IP-based interface that serves the needs of consumers and the requirements for innovation and competition, without compromising the legitimate expectations of content distributors and providers. The participants emphasized that the obstacles to this competitive future are not technological and that the necessary tools are at hand through private sector standards that can be referenced in Commission regulations. Rather, the obstacles lie in a skewed marketplace that stifles innovation and competition.

The participants observed that the Internet delivery of video programming to televisions illustrates what is possible and what is lacking in the market, but does not provide any near or

January 26, 2011

Page 2

long-term substitute for assuring competition in the market for devices that render MVPD programs and services, as required by Section 629. What is necessary to empower consumers and to create device competition are technical standards that enable any device to present a unified user interface that offers choices of both MVPD and non-MVPD programs and services, and home network content. Existing FCC regulations allow each MVPD to offer such a unified interface if it wishes, but have not succeeded in allowing manufacturers and retailers of competitive devices to offer such a product on a national basis. The tools are at hand to address this lack through an AllVid rulemaking that references private sector industry standards.

The participants explained that this result would not diminish or denigrate the rights of MVPDs, and would offer MVPDs, as well, new competitive opportunities:

- An AllVid rulemaking should not interfere with the ability of an MVPD gateway to port the MVPD's own user interface to client devices, to be presented without change as an option for the consumer to choose. Hence, concerns over positioning in channel line-ups, *etc.*, are misplaced.
- The transmission of metadata from an MVPD's program guide so as to assure the accurate description of program offers when presented in a client device's unified guide provides assurance of accurate representation and has no impact on intellectual property rights, or on the right of guide data purveyors to license client devices.
- Transmission of programming and data over a gateway-client interface will not change the secure copy protection handoffs among protection technologies that are provided for in the existing MVPD licenses offered for competitive devices. Like the content, the protection obligations would be passed on from technology to technology, all by license, as a condition for the content to be provided. Thus, "privity of contract" concerns are misplaced.
- Providing a common IP-based link between gateway and client devices will break down the last, archaic distinctions among classes of devices that impede competition and that have been eliminated in markets other than television. Personal computers will interact more readily with MVPD and home network systems. MVPDs themselves will be able to offer client devices for *each others'* systems. The current skewed incentives in favor of the archaic model of renting captive, proprietary devices with limited interoperability will diminish.

As representatives of leading Internet, consumer electronics, retail, and public interest entities, the participants urged the Commission to adhere to its timeline, and thus to move expeditiously to implement the key *device* elements of the National Broadband Plan, without which the Plan cannot be implemented completely and successfully. These companies view the AllVid timeframe, as set forth in the Broadband Plan and as contemplated by the Commission, as

January 26, 2011  
Page 3

essential to breaking down the artificial regulatory barriers that now isolate television and computer devices from MVPD services, and which impose artificial distinctions among classes of devices.

This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules. The proceedings at issue are not restricted, therefore presentations are permitted but disclosure not required.

Respectfully submitted,

*Robert S. Schwartz*

Robert S. Schwartz

cc:

Marilyn Sonn  
Bill Lake  
Nancy Murphy  
Steve Broeckaert  
Brendan Murray