

ALLVID
Tech Company Alliance

February 16, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 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 Mr. Chairman:

The AllVid Tech Company Alliance (“Alliance”) was formed by leading companies in consumer electronics, retailing, Internet services and products, and content protection products.¹ Alliance members support the “gateway” approach to integrating video services into home networks, as proposed in the Commission’s National Broadband Plan. This approach will best enable innovation and new product entry across consumer electronics and computer platforms, and will give consumers new choices in both devices and programming. We therefore urge the Commission promptly to issue its Notice of Proposed Rulemaking in this proceeding,² and to focus full discussion and public

¹ The formative members of the Alliance are Best Buy Co., Inc., Google Inc., Mitsubishi Digital Electronics America, NagraVision, SageTV, LLC, Sony Electronics Inc., and TiVo Inc.

² Ample groundwork has been laid in prior actions by the Commission. *See, Connecting America: The National Broadband Plan* (Mar. 16, 2010) (“National Broadband Plan”); *In the Matter of 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*, MB Dkt. No. 10-91, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Notice of Inquiry (rel. Apr. 21, 2010) (“NOI”); *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Third Report and Order and Order on Reconsideration (Oct. 14, 2010) (“Third Report and Order”).

comment on how best to promote the availability of competitive navigation devices to achieve true interoperability with home and personal networks.

Congress enacted Section 624A (47 U.S.C. § 544a) and Section 629 (47 U.S.C. § 549) of the Communications Act because it foresaw that interoperability problems between televisions and programming and services offered by Multichannel Video Programming Distributors (“MVPDs”) would frustrate consumers and stifle innovation and competition in devices.³ The completion of the transition to digital television and the widespread use of Internet Protocol (“IP”) for secure interactive communications from home devices have produced the necessary private sector resources, and made this the optimal time, for the Commission to bring Congress’s mandate to fruition.

The television platform has fallen behind other products and services in offering consumers the seamless and intuitive interface that they now expect from other “smart” connected products. While, as a recent letter from the NCTA notes,⁴ complementary programming and services have emerged, competition and innovation in devices that integrate MVPD programming with video content offered over the Internet has been lacking. A “gateway” approach that relies on a common IP interface to support a vast and innovative range of new home network devices was presented in Section 4.2 of the National Broadband Plan. The Alliance urges the Commission to make this approach the focus and centerpiece of its “AllVid” rulemaking in Docket 10-91.

³ See, Comments of Senator Leahy, 137 Cong. Rec. S18376-S18380 (1991); and references cited, *In the Matter of A National Broadband Plan for Our Future, et al.*, GN Docket Nos. 09-47, 09-51, 09-137, and CS Dkt. No. 97-80, Comments of the Consumer Electronics Retailers Coalition at 3-4 (Dec. 21, 2009).

⁴ Letter to Chairman Genachowski from Kyle McSlarrow, President and CEO of the NCTA, Jan. 26, 2011 (“NCTA Jan. 26 letter”).

The AllVid “gateway” approach ensures that video programs and services as offered by an MVPD can be rendered, stored, and responded to by consumer-owned home network devices as efficiently as consumer-owned devices now connect to and interact with the Internet. Once there is an interface between the home network and MVPD networks that is based entirely on IP and other private sector standards, innovation can flourish across the range of present and future home devices – rather than in only a few devices as defined and limited in MVPD licenses and programming contracts. It is time for products that find, render, and store television programming to catch up with flexibility, convenience, and national portability that consumers have come to expect from “smart” digital products.

Only through such an open approach, based on private sector standards subject to reasonable and non-discriminatory licensing, can the objectives of Section 629 and of the National Broadband Plan be realized.⁵ *Ad hoc*, device-specific and proprietary approaches that can deliver some content that is also available as part of a multichannel offering from an MVPD are no substitute for the competition and innovation in devices that can actually receive and deliver MVPD offerings without the need for a leased, proprietary set-top box. Section 629 clearly requires the FCC’s regulations to assure competition in the market for navigation devices that render and store MVPD programming offerings and services. Of all the approaches discussed in the records of the above captioned proceedings, only the IP gateway approach, as described in Section 4.2 of the National Broadband Plan, would accomplish this result.

⁵ An “open approach” does not mean that content accessed by an AllVid device would not be robustly protected from inappropriate copying and redistribution. Indeed, the Alliance members agree with the Commission that the AllVid will only succeed if the high-value, MVPD content is adequately protected throughout the entire home network. *See* NOI at ¶ 28.

Alliance members' interest in a gateway approach is tangible and urgent. As the NCTA January 26 letter noted, Alliance members that exhibited at CES showed many of the features that bring new capabilities to consumer TVs. We applaud advances and innovations of companies, including some MVPDs, that have worked hard to deliver them, but we draw a different conclusion. Simply put: Internet *Protocol* is a key to finally enabling a wide range of home network devices to access MVPD programming offerings and services, but Internet *program delivery* is not a substitute for device competition in connecting consumers to full multichannel programming and services. The very name of this technique – “Over The Top” (“OTT”) – discloses that it is a complement to, not a replacement for, competition in devices and programming. Only device competition for rendering “multichannel video programming and other services offered over multichannel video programming systems”⁶ will satisfy the Commission’s mandate.

The Potential For True Competition

An IP-based home interface to access MVPD programming offerings has been sorely needed. The consumer friendliness of user interfaces commonly cited with respect to platforms such as “smart phones”⁷ highlights that such interfaces are *not* available in a way that supports competitive entry and device competition with respect to MVPD programs and services. Rather, the prospect of truly unified guides and full consumer choice are discussed as possibilities only for devices, navigation, and program guides provided by the MVPDs and their chosen suppliers – *not* for innovation in competitive

⁶ 47 U.S.C. §549 (a).

⁷ NCTA Jan. 26 letter at 2, 5, 9.

products.⁸ So long as this is the case, device and ancillary product competition for MVPD programming offers and services is not assured.

Focusing on *ad hoc* enabling of access to *some* multichannel content on *some* devices masks the competitive potential of assuring access to all multichannel content on *all* devices. An AllVid Gateway looks beyond traditional television and multichannel offerings. It would empower any CE product to receive any programming offered by an MVPD on a subscriber basis, and would allow any CE product to work securely with respect to multichannel content. Consumers will no longer need to be concerned about how to port to or store content on TV, computer, game, or mobile platforms, and whether programs would be lost if the consumer switches multichannel programming providers. Consumers will have the option of choosing multichannel programming interactively without worry about a potential cap on their use of Internet bandwidth. Multiple CE manufacturers – not just those chosen by service providers – will respond to consumers with innovations that directly address their needs and desires.

A competitive market based on an IP interface will give consumers far greater ability to choose winning technologies and products in the marketplace, rather have winners and losers dictated to consumers by the whims of service providers. It will also allow home network products to obtain programming over ample dedicated MVPD bandwidth, rather than relying on the much smaller amount of bandwidth allocated to the Internet. Submissions, presentations, and demonstrations in the above-captioned

⁸ *Id.* at 2, 8-9. Once the “smartphone” market became device-competitive, the speed of its development and the fierceness of innovation and competition have amazed observers. *See, e.g.*, David Goldman, *Your New Smartphone Is Already a Dinosaur*, CNNMoney.com, Jan. 31, 2011, <http://finance.yahoo.com/family-home/article/111990/your-new-smartphone-is-already-a-dinosaur>.

proceedings have demonstrated to the Commission that this can be achieved through reliance on private sector standards that are already developed or are at hand.⁹

It is essential for the Commission to break down the wall separating the home network from MVPD networks – not just poke a few holes in it, or rely on progress on the peripheries. The seeds for real competition must emerge in chips, technologies, and interfaces that can be organic to tens of millions of products, services, and consumer uses – not just those presently conceived, but those that innovative minds, and users who can select and adapt their own devices, *can* conceive.¹⁰ Otherwise, consumers wishing to keep up with the changing patterns and strategies of content distribution will have to keep changing the types, and even *brands*, of devices and applications that they purchase. This is far from the intention behind Section 629, the goals of the transition to digital television, or the essentials of the National Broadband Plan.

Competition In The Markets For Devices And Services Is Far From Assured

Despite some recent progress in making television smart and connected, unless the Commission pursues a gateway approach consumers will not have the sort of open and innovative competitive market to which they are entitled. The NCTA January 26 letter noted that when Section 629 was adopted, “almost everyone had to lease a set top

⁹ See, e.g., Jan. 26, 2011 *ex parte* letter from Robert Schwartz re visits of Sony Electronics, Google, Public Knowledge, Free Press, Media Access Project, Consumer Electronics Association and Consumer Electronics Retailers Coalition; NOI Comments of Sony Electronics at 12-21.

¹⁰ It is well documented that users are the primary influence on the ultimate functions of devices. See, e.g., Eric von Hippel, *The Dominant Role of Users in the Scientific Instrument Innovation Process*, Research Policy 5, 212-239 (1976), available at <http://web.mit.edu/evhippel/www/papers/1976%20vH%20instruments%20paper.pdf>. This ability for owners of devices to find innovative uses and compel new designs has long been denied to multichannel subscribers.

box ... to receive multichannel programming.”¹¹ Actually, in the analog era half of all cable subscribers got by without set-top boxes; the cable industry’s avoidance of digital era standardization has made subscribers more, not less, reliant on proprietary leased devices. Despite the innovation and development demonstrated at CES, the number of devices capable of *replacing* the MVPD-leased set top box as a means of receiving MVPD programming and services remains as limited as it has ever been. No competitive products can integrate the full range of MVPD services with non-MVPD services. Examples of multichannel programming being available through “apps” or new devices, as cited by the NCTA, continue to primarily rely on the presence of a leased set-top box¹² for receipt of the MVPD offerings.¹³ Other exceptions rely on the CableCARD solution, which the Commission concedes has met with limited success.¹⁴

Multichannel providers who now urge that “the marketplace will solve everything” ignore most of their own linear programming, for the delivery of which they allocate amounts of bandwidth that are huge compared to the amount they allocate to the Internet. They equate the availability of some OTT content to many “connected devices” with the law’s requirement that *many* competitive devices connect to *all* MVPD programming offerings. NCTA members’ own filings dispute any such equation. For

¹¹ NCTA Jan. 26 letter at 3.

¹² Comcast and DirecTV “app” solutions “require one set-top box Delivering content to other networked devices may require a set-top box as well.” NCTA Jan. 26 letter at 4, n. 7.

¹³ As described in the NCTA letter, Comcast’s one-to-one arrangement with Samsung relies on use of a leased navigation device; the employment of tablet computers is limited to use as remote controls or as displays of some content in lieu of a TV rather than as a navigation device to a TV. Similarly, TV Everywhere is a supplemental service that is meant as an adjunct rather than alternative to receipt of subscribed programming through proprietary set-top devices.

¹⁴ Third Report & Order ¶ 8. The NCTA resisted this Commission’s order requiring MSOs to make CableCARDs more viable, on the basis that AllVid would provide a more complete solution. The CableCARD solution, while an important step forward, still applies only to cable and remains hobbled by licensing restrictions on integrated guides and interactive capabilities of competitive devices.

example, in seeking approval of their recent transaction, Comcast and NBC Universal told the FCC that Internet video “does not compete with MVPD service but is a supplement.”¹⁵ The Commission agreed.¹⁶ As NCTA itself has advocated, Section 629 mandates the Commission to address MVPD “programming and other services,”¹⁷ not supplements to them.¹⁸

In its January 26 NCTA letter, NCTA refers in most instances to “content” that MVPDs distribute, rather than to the “programming and services” actually addressed by Section 629. The difference is more than semantic. Where multichannel programming and services are involved, the MVPD can make a unified offer of *all* of its content, as presented through its leased, proprietary set-top box, and choose what Internet offers to make on a supplementary basis. Yet MVPDs, and NCTA, have resisted allowing any such offer to be made to consumers who buy competitive devices.

¹⁵ *In the Matter of Application of Comcast Corp., et al*, Memorandum Opinion and Order ¶ 76.

¹⁶ *Id.*, ¶ 79.

¹⁷ *See, e.g., In the Matter of: Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80 and PP Docket 00-67, Reply Comments of the NCTA on Further Notice of Proposed Rulemaking, at 48 – 52.

¹⁸ In the context of “Open Internet” proceedings, the NCTA has admitted that transmission of IPTV content as an “MVPD” service is subject to regulation under Title VI. However, in the same filing, NCTA insisted that where the content is sent over the public Internet (as, presumably, most OTT content would be sent to competitive devices), the FCC has no regulatory authority, and the exercise of any such authority would be unconstitutional. *See, In The Matter of Preserving the Open Internet, Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Comments of the NCTA at 5, 6 and n. 12. Another MVPD has already sued the Commission as to its authority over such services. *See, Cecilia Kang, Verizon sues FCC over net-neutrality rules*, Washington Post, Jan. 20, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/20/AR2011012005853.html?hpid=topnews>. Previously, with respect to the enforcement of Section 629, the Commission has granted the result urged by the NCTA only to face a lawsuit from an NCTA member. *See, Charter Communications v. FCC*, 440 F.3d 31 (D.C. Cir. 2006).

The contrast between actual device competition and a limited, *ad hoc*, proprietary world based on contracts that are subject to cancellation or expiration¹⁹ remains stark. Even where effective, MVPD-device arrangements are limited in scope as to device, content, and geography. They embed reliance on a single MVPD and single device, rather than support comparison shopping among MVPDs and devices. They frustrate consumers who, as many or most do, periodically need to move, or who wish to change their MVPD providers, or to buy a new and different CE product. They produce a false investment in present devices, leased as well as purchased,²⁰ rather than competition among devices or technologies.

Alliance members support and share many of the goals NCTA has articulated for the development of a retail market for new MVPD-enabled devices,²¹ and we look forward to and welcome the opportunity to work with MVPDs toward delivering that promise. We also support and appreciate progress toward competition and innovation in bringing content “from the cloud” to home network devices. While everyone has recognized the importance of these new services to consumers, few have viewed the

¹⁹ See, e.g., Tim Arango, *Time Warner Views Netflix as a Fading Star*, New York Times, Dec. 12, 2010: “The relationship between Netflix and the media companies will most likely change drastically, beginning next year when a deal between the company and Starz, the pay-TV channel, to stream movies from [Sony](#) and [Disney](#) expires.” <http://www.nytimes.com/2010/12/13/business/media/13bewkes.html?partner=rss&emc=rss> See also, Ben Fritz, *Time Warner’s Jeff Bewkes gets aggressive on video-on-demand, Netflix*, Los Angeles Times, Feb. 11, 2011, <http://latimesblogs.latimes.com/entertainmentnewsbuzz/2011/02/time-warners-bewkes-gets-aggressive-on-video-on-demand-netflix.html>.

²⁰ MVPD-leased digital video recorders generally will not transfer digital video to another recording device, although the Subpart W FCC Encoding Rules provide that content cannot be coded to block such transfers. Buying a more innovative device at retail or switching MVPDs usually means losing all of one’s stored video and frustrates competition among MVPDs, as well as discouraging competitive entry.

²¹ Letter from Kyle McSillarow to Chairman Julius Genachowski, GN Docket Nos. 90-47, 09-51, 09-137, CS Docket No. 97-80 (Mar. 12, 2010).

Internet as even a potential replacement for multichannel programming and services.²²

Only the gateway approach as set out in the National Broadband Plan establishes the reliability and portability necessary for a national market in components, devices, and applications. It will invite, rather than stifle, innovation and competition.

The Alliance urges the Commission to issue a Notice of Proposed Rulemaking that will focus public comment on opening the market for device competition in rendering programming and services, as directed by the Congress in Section 629, and on an IP-based gateway link between external and home networks, as laid out in the National Broadband Plan. In so doing, the Commission need neither discount nor exaggerate the beneficial influence and potential of other mechanisms for distributing content to the home, and for enabling consumer choice.

²² See also, e.g., Mark Cuban, *Don't Waste the Internet on TV – Protect the Future of the Internet*, <http://blogmaverick.com/2010/03/13/dont-waste-the-internet-on-tv-protect-the-future-of-the-internet/>; letter from Bill Bauer, WinDBreak Cable / Beyond Broadband Technology (BBT), to Commissioner McDowell, Jan. 28, 2011, filed *ex parte* in Docket No. 10-91: “[T]here is a fundamental flaw in this method of delivering video services ... if we are to truly provide all parts of the country with a comparable experience regarding video delivery. OTT, because of its inherent inefficiency, cannot accomplish that goal.”

Respectfully submitted,

ALLVID TECH COMPANY ALLIANCE

Best Buy Co., Inc.
Google Inc.
Mitsubishi Digital Electronics America
Nagravision
SageTV, LLC
Sony Electronics Inc.
TiVo Inc.

Of Counsel:

Robert S. Schwartz

Robert S. Schwartz
Constantine Cannon LLP
1301 K Street, N.W., 1050 East
Washington, D.C. 20005
202 204-3508

Jeffrey L. Turner
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037
202 457-6434

Cc:

Hon. Michael J. Copps
Hon. Robert M. McDowell
Hon. Mignon Clyburn
Hon. Meredith Atwell Baker