



Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
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 behalf of its members, the Telecommunications Industry Association (“TIA”) urges the Commission to refrain from adopting a notice of proposed rulemaking (“NPRM”) in the above-referenced proceeding, given the rapidly evolving video distribution marketplace and the substantial harm to innovation and consumer choice that would be caused by an “AllVid” technology mandate.¹ The Commission can achieve the goals of Section 629 of the Communications Act (the “Act”) without requiring AllVid.² Nor, given the strong record established against the AllVid proposal, is there any need for the Commission to seek further comment on either the feasibility or desirability of AllVid. In the eleven months since the Commission adopted the AllVid notice of inquiry (“NOI”)³ – and even more so in the seven months since the comment cycle closed – the record evidence has irrefutably demonstrated that innovation is best fostered by private industry operating in a flexible marketplace, not by government rules that lock technology in place. An NPRM will create regulatory uncertainty in this highly dynamic marketplace and chill continued investment and innovation. In any event, any record compiled in response to an NPRM is sure to showcase the same exponential growth in consumer-friendly products and services, leading to the same conclusion: the Commission should avoid any regulatory action, such as AllVid, that will undermine the continued growth in technologies that offer consumers high-quality video content

¹ TIA is the leading trade association for the information and communications technology (“ICT”) industry. TIA’s 600 member companies manufacture or supply the products and services used in the provision of broadband and broadband-enabled applications. With roots dating back to 1924, TIA works to promote the deployment of fixed and mobile broadband, mobile wireless, information technology, networks, cable, satellite and unified communications systems. TIA members’ products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, government, the military, the environment and entertainment.

² Section 629 of the Act charges the Commission with the responsibility to “assure the commercial availability . . . of converter boxes and other equipment used . . . to access multichannel video programming...” 47 U.S.C. § 549(a).

³ *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*

delivered from multiple sources to multiple leased or retail devices. Rather than issuing an NPRM, TIA respectfully urges the Commission to recognize that today's pace of marketplace innovation can and does satisfy the video device goals of Congress, the National Broadband Plan, and the AllVid NOI.

Today's video delivery marketplace offers a diverse and expanding choice of innovative, competing video devices, services, and business models – absent a regulatory mandate. Recent innovations include the emergence of new devices that access multichannel video programming distributor (“MVPD”) services, including two-way services, without the need of a set-top box. Manufacturers also have continued to deploy new devices and services to provide other video content “over the top” (“OTT”) to consumers’ televisions and other devices through consumer broadband service.

For example, at the January 2011 International Consumer Electronics Show, Samsung Information Systems America, Inc. (“Samsung”), in conjunction with DirecTV, Inc. (“DirecTV”), Time Warner Cable (“TWC”), and Comcast Corporation (“Comcast”), introduced new “Smart TV” televisions, Blu-Ray players, and other devices which can access MVPD content and services without the need for an attached set-top box and/or remote control from the MVPD. As Samsung recently demonstrated to FCC staff,⁴ its Smart TV platform will be able to run an application (“app”) allowing TWC subscribers to access live television and MVPD services without a set-top box. The DirecTV app enables a single set-top box to act as a video server for multiple televisions or other enabled devices in a subscriber’s home, and the Comcast app will enable access to Comcast programming on Samsung tablets, Smart TVs, and other devices.⁵ These non-MVPD supplied devices are evidence that the Commission’s goal to “unleash competition and innovation in equipment used with MVPD services”⁶ can and is being achieved in today’s diverse environment for innovation without a regulatory mandate.

Additionally, over the past eleven months since the AllVid NOI was released, manufacturers have introduced many new devices or services on existing devices that deliver television shows, movies, and other video content to consumers’ televisions and other devices through consumer broadband service. New OTT devices introduced since the comment cycle closed in August 2010 include Google TV, D-Link Boxee, NETGEAR Roku, Sony Netbox, as well as numerous Internet-enabled Blu-ray players and TVs. New OTT functionality has also been introduced to gaming consoles such as the Xbox 360, PlayStation 3, and Wii, as well as to home and laptop computers, smart phones, and other innovative devices.⁷ Such devices have prompted the development of new

Equipment, MB Docket No. 10-91; CS Docket No. 97-80; PP Docket No. 00-67, Notice of Inquiry, FCC 10-60 (rel. Apr. 21, 2010) (“AllVid NOI”).

⁴ See Letter from John M. Godfrey, Samsung Information Systems America, Inc., to Marlene H. Dortch, Federal Communications Commission, MB Docket No. 10-91 (filed Feb. 25, 2011).

⁵ The “AllVid Tech Company Alliance” (a small group composed primarily of long-time AllVid supporters who recently adopted a new name) asserts that these examples should be discounted because they “rely on the presence of a leased set-top box for the receipt of MVPD offerings.” Letter from the AllVid Tech Company Alliance to Chairman Julius Genachowski, MB Docket No. 10-91, at 7 (filed Feb. 16, 2011) (“AllVid Alliance Feb. 16 *Ex Parte*”). Yet the AllVid mandate itself would rely on the presence of a leased gateway device to distribute content throughout the home – an exact parallel to the function being served by the DirecTV server.

⁶ AllVid NOI, ¶18.

⁷ The AllVid Alliance asserts that OTT video is a “complement to, not a replacement for” more traditional set-top devices. AllVid Alliance Feb. 16 *Ex Parte* at 4. Either way, as the National Broadband Plan recognizes, the increasing

business models for content delivery over the past year. Netflix now delivers more on-demand TV shows and movies than DVDs to its subscribers. Hulu is experimenting with a paid subscription service. *A la carte* video services such as Wal-Mart's VUDU, Apple's iTunes, and Amazon's Unbox offer hundreds of thousands of television shows and movies for instant streaming or download. Just last month, Amazon announced that 5,000 of its titles would be available for streaming to any of its Amazon Prime customers. MVPDs and cable networks are also now offering services, such as Comcast's Xfinity Online and HBO GO, which enable subscribers to access content and services on Internet-connected consumer devices without a set-top box.

Innovation is also transforming the home network and the MVPD network. Network equipment manufacturers are introducing new home networking technologies to share MVPD and other video content across many different consumer devices, and are developing technology to provide cloud-based video content and services accessible at home and on the go. For example, the Videoscape technology developed by Cisco Systems, Inc. ("Cisco") uses cloud-based services and a software-based approach to enable a wide range of third-party consumer devices to access MVPD and non-MVPD content and services from the consumer's home or elsewhere.⁸ Likewise, the Medios solution developed by Motorola Mobility ("Motorola") integrates MVPD, Internet, and other content via a single, familiar user interface, and gives customers the ability to access their favorite content via that interface across multiple displays and devices.⁹

These new devices, business models, and network enhancements demonstrate the wide range of innovation occurring in the video delivery marketplace. As consumers increasingly demand flexible access to more content on many different platforms, MVPDs, equipment manufacturers, and content providers are collaborating and competing to meet those demands. As a result, consumers now have more video delivery options than ever before.

The Commission should act to preserve and promote today's environment of diverse innovation, not impede developments by imposing a static, inflexible technical mandate. As described above, consumers today have more choices of video services and devices, through multiple competing business models, than even seven months ago when the AllVid NOI comment cycle closed. However, some participants in this proceeding would have the Commission choke off that diverse innovation by imposing a static, inflexible model of video delivery. For example, by focusing exclusively on physical home networking solutions, an AllVid mandate could preclude or significantly hinder virtual home networks such as Motorola's Medios cloud-based video delivery solution, or Cisco's cloud-based Videoscape technology.¹⁰ AllVid could also make certain business models uneconomical or difficult, such as low-cost, pure one-way video services. Rather than imposing rules that would limit experimentation and competition, the Commission should instead promote the current environment of rapid innovation across a diverse set of technologies and business models. Such an approach will best allocate resources to meet consumer demands.

availability of OTT video on television sets benefits consumers by increasing choice in technologies and business models. *See Connecting America: The National Broadband Plan* at 50.

⁸ *See* Cisco Systems, Inc., Notice of *Ex Parte*, MB Docket No. 10-91 (filed Feb. 2, 2011) ("Cisco Feb. 2 *Ex Parte*") (describing Cisco's Videoscape technology).

⁹ Comments of Motorola, Inc., MB 10-91 (filed July 13, 2010) ("Motorola Comments") at 12.

¹⁰ *See* Motorola Comments at 12-13; Cisco Feb. 2 *Ex Parte*; and Panasonic Comments at 9. AllVid also would increase costs for consumers who prefer tru2way devices. *See* Panasonic Comments at 9.

Given the rapid pace of innovation in this field, any AllVid mandate is likely to be outdated by the time it is implemented. Imposing an AllVid requirement would divert a massive amount of resources into a years-long effort to mandate the use of certain technologies that will likely be out of date upon adoption. Experience with past Commission regulatory efforts indicates that developing and implementing the AllVid mandate will take years. The standard-setting process alone likely would take a year or more.¹¹ In addition, content owners, MVPDs, and equipment manufacturers would need to negotiate intellectual property rights and contracts in order to rework their previous, diverse business arrangements into new arrangements consistent with the mandatory AllVid approach. Finally, manufacturing AllVid gateways and deploying the gateways and compatible video devices to the household of every MVPD subscriber is a major undertaking that would take a significant amount of time.

During the years-long AllVid standard-setting, negotiation, and implementation process, MVPDs, content providers, and device manufacturers would continue to strive to meet consumers' demands through innovative technology and business models, even as resources are unnecessarily diverted toward AllVid. The resulting rapid pace of innovation, as discussed above, means that any AllVid mandate would almost certainly be overtaken by other technological developments during its lengthy development and deployment.¹²

Picking winners and losers in this diverse environment of rapid innovation is a job best performed by consumers, not regulators. The Commission should act to preserve and promote the abundant innovation taking place today in the video delivery marketplace. This will ensure continued competition over the means by which video is viewed by consumers, achieving the Commission's and Congress's ultimate goal of maximizing consumer choice and welfare.

Respectfully submitted,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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¹¹ Some AllVid proponents have pointed to standards produced by the Digital Living Network Alliance ("DLNA") as potential standards for incorporation into the AllVid mandate. While DLNA is an excellent example of industry standard building, mandating DLNA or any other standards as part of an FCC rule would freeze innovation in its current form, foreclosing the ability of efficient industry standards bodies to adapt to changing technology and marketplace demands.

¹² As parties to this proceeding have pointed out, the last video delivery technology mandate – CableCARD – was out of date nearly upon adoption, in part because regulators presumed that the then-existing model for video services would remain static while the standard was developed and implemented. NCTA *Ex Parte* Submission of *Economic Analysis of the Regulation of MVPD Navigation Devices*, MB Docket No. 10-91, at 14 (filed July 19, 2010). If the Commission mandates the AllVid gateway, it makes the same presumption and risks repeating the mistakes that were made with CableCARD.

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