

switching voice service from traditional telephone companies do not purchase other services from that company, only a miniscule percentage of cable incumbents' voice customers are voice-only. Thus, customers departing from telephone companies typically cannot receive retention offers while customers departing from cable companies typically can – even though both companies would be attempting to sell the same bundle of voice, video, and broadband services. While Verizon still believes that customers benefit from having all available information about competitive offerings, the same rules should apply to all.¹⁹

D. The Commission Should Also Reject Proposals – Like AllVid – That Would Inhibit Innovation and Competition.

Just as important as the steps the Commission should take to encourage video competition and innovation are the steps that it should forego. As a general matter, as video competition becomes more prevalent, the need for regulation is minimized. New regulation – particularly as applied to competitive providers – can distort competition and inhibit innovation. New technology mandates along the lines of the AllVid Proposal are

¹⁹ See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration, 19 FCC Rcd 15856, ¶ 21 (2004) (the effect of maintaining disparities between the regulation of video and voice services will be to “reduce competition in the provision of triple play services and result in inefficient use of communications facilities”). When it prohibited telecommunications carriers from entering into exclusive access contracts with residential multiple tenant environment owners, the Commission noted that doing so was necessary to “create parity for the provision of telecommunications services to customers,” reasoning that “the importance of regulatory parity is particularly compelling” in “an environment of increasingly competitive bundled service offerings.” *Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 23 FCC Rcd 5385, ¶¶ 1, 5 (2008).

a good example of the type of regulation that would be affirmatively harmful to video competition and to consumers.

Despite underlying laudable goals, similar prior mandates – such as requirements for CableCards and for 1394 outputs on set-top boxes – have proven to be of little real interest or benefit to consumers or to innovation. In contrast, without any regulatory compulsion, video providers (including facilities-based providers and online providers), consumer electronics manufacturers, and others are engaging in rapid innovation, and consumers are reaping the benefits. Among other things, smart video devices, such as networked TVs, blu-ray players and tablets, are being rapidly embraced by consumers. And video service providers are all rushing to get their services onto these devices as quickly as possible, in order to better meet the growing consumer demand. The result is that consumers have a large and growing number of ways to access and consume video programming, often on multiple devices and from multiple different providers.

In a dynamic marketplace such as this, new regulation could not possibly keep pace with or predict what would best serve consumers interests. Indeed, even in the year since the Commission first released its AllVid Proposal, the marketplace has progressed to such an extent that the contemplated hardware-based technology mandates now seem outdated and anachronistic.

Moreover, to the extent that any new requirements along these lines were to only apply to one subset of the video marketplace – such as facilities-based video distributors of programming – such requirements would not only inhibit technological innovation but would also introduce new distortions into the marketplace. Netflix – with its 23 million subscribers – and other online video providers would gain artificial competitive

advantages by being free from such regulation, while Verizon and other video distributors likely would be slowed in their ability to experiment and introduce new services and features to subscribers if they were required to force their services through the proposed one-size-fits-all mandate.

Some of the suggestions for an AllVid solution also would go well beyond the scope of Section 629 and raise additional concerns. For example, the Commission's *AllVid NOI* suggested as one possibility that the AllVid framework would allow retail devices to select from the full array of services that MVPDs offer and use those services in any manner. If implemented in this manner, the AllVid solution would require video distributors to "unbundle" their video services and make the component parts available to other providers on a disaggregated basis – something the text of Section 629 neither contemplates nor authorizes and that would raise serious First Amendment concerns.

The Commission should avoid these problems and encourage competition and innovation by staying its hand with respect to AllVid and other technology mandates. Doing so would allow this dynamic marketplace to continue to evolve in response to consumer demand – not regulatory central planning.

IV. THE COMMISSION SHOULD AVOID UNNECESSARY DATA REPORTING.

As the Commission considers its request for data to complete its annual video competition reports, it must be sensitive to the costs and burdens attendant to providing such data. The Commission's *FNOI* seeks voluminous data on all aspects of video providers' businesses, ranging from availability, to pricing, to marketing plans, to technology, and more. Rather than engaging in this type of broad inquiry, the

Commission should take a targeted approach to assessing the “status of competition in the market for the delivery of video programming” by making full use of the numerous data sources already available to it – including through its numerous, existing reporting requirements on video and broadband providers and through existing third party sources.

A more restrained and less burdensome approach would not only suffice for purposes of meeting the Commission’s annual reporting obligation, but also would be more consistent with the requirement that the Commission minimize the burdens of its regulatory activities. As President Obama recognized in January, and Chairman Genachowski subsequently echoed, the regulatory system should “promot[e] economic growth, innovation, competitiveness, and job creation . . . [and] use the best, most innovative, and least burdensome tools for achieving regulatory ends.”²⁰

To further those interests, the Commission and other federal agencies may take action only “upon a reasoned determination that its benefits justify its costs” and “tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulation.” *Executive Order* § 1(b). Similarly, as the Chairman has recognized, avoiding unnecessary and costly “red tape” and “remov[ing] barriers and eas[ing] the regulatory burden, where possible,” are important steps that the Commission can take to encourage broadband investment and deployment, and the associated increase in video competition. *Genachowski Speech* at 2.

²⁰ President Barack Obama, Executive Order 13563 § 1, 76 FR 3821 (2011) (“*Executive Order*”); Chairman Genachowski, “Prepared Remarks of Chairman Julius Genachowski at the Broadband Acceleration Conference,” http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DOC-304571A1.pdf, at 4 (Feb. 9, 2011) (“*Genachowski Speech*”).

This recognition of the need to account for the costs and burdens of regulation is also reflected in the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.* Before engaging in a data collection, the Commission is required to certify, among other things, that the collection “is necessary for the proper performance of the functions of the agency, including that the information has *practical utility*” and that the “information is not unnecessarily duplicative of information otherwise reasonably accessible to the agency.” *Id.* § 3506(c)(3). The Commission also is required to certify that the collection “reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency.” *Id.*

To satisfy these standards in the context of this proceeding, the Commission should refrain from an intrusive and burdensome inquiry and instead should tailor its requests for information to those that would have “practical utility” in assessing the status of video competition. Likewise, the Commission should take full advantage of its existing data collection efforts and of the availability of data from other agencies or public sources, before seeking additional data from video providers.

V. CONCLUSION.

Video competition and innovation continue to spread at a rapid pace. While the Commission should address a few, lingering concerns that continue to harm the video marketplace, it should also be careful not to introduce new distortions as a result of unnecessary regulation.

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Your submission has been accepted

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Attorney/Author Name: William H. Johnson	
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2011, I served a copy of the foregoing on the parties listed below via hand delivery and/or FedEx.

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