

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Annual Assessment of the Status of ) MB Docket No. 07-269  
Competition in the Market for the )  
Delivery of Video Programming )

**REPLY COMMENTS OF AT&T INC.**

AT&T Inc., on behalf of itself and its operating company affiliates (collectively, “AT&T”), respectfully submits these reply comments to respond to claims by NCTA that competition in the provision of multichannel video programming distribution services has obviated the need to maintain the exclusive access prohibition in the Commission’s program access rules,<sup>1</sup> and claims by consumer electronics manufacturers that the Commission should adopt its AllVid proposal to assure the commercial availability of navigation devices.<sup>2</sup> As discussed herein, the Commission should reject these claims.

**I. THE PROGRAM ACCESS RULES REMAIN NECESSARY TO ENABLE COMPETITION.**

The opening comments in this proceeding establish that the market for the delivery of video programming is in a state of flux, as new competitors and distribution models

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<sup>1</sup> NCTA Comments at 14-15.

<sup>2</sup> AT&T also wishes to clarify a point made in its opening comments. On page 6 of its comments, AT&T described several innovations enabled by its IP-based video distribution architecture. AT&T first described the innovative “Total Home” DVR functions offered on AT&T U-verse, and then went on to describe a variety of other interactive applications – such as the AT&T U-bar, which allows subscribers to view customizable weather, sports, traffic and stock information. AT&T noted that this functionality was available to all subscribers at no additional cost. AT&T wishes to clarify that its U-basic package (which includes only local channels), and the U-100 package (which provides up to 150 channels of programming) do not come with an enabled DVR; for those customers there is an extra fee to enable the DVR functionality.

have begun to change the ways in which viewers consume video programming services.<sup>3</sup> Although multichannel video programming services continue to be distributed predominantly by incumbent cable operators and systems, new entrants (including competitive cable systems, wireline video programming providers – like AT&T, DBS providers, and others) have begun to establish a significant beachhead in the marketplace, offering consumers for the first time a real alternative to plain old cable services. In addition, a variety of online video service providers have begun to emerge, offering consumers a whole new range of choices. Consumers thus have more choices than ever, and we stand on the precipice of finally realizing Congress's and this Commission's 20-year old goal of bringing the benefits of competition to the video distribution market.

But while the goal of video competition now appears to be coming within our grasp, these marketplace developments have not obviated the need for retention and vigorous enforcement of the prohibition against exclusive access arrangements in the Commission's program access rules, as NCTA claims.<sup>4</sup> As AT&T and Verizon have documented, continued application and enforcement of that prohibition remains necessary to ensure that video competition continues to grow and develop, rather than withering on the vine.<sup>5</sup> Indeed, even under the existing rules, competitive video service providers (like AT&T and Verizon) continue to struggle to obtain any (let alone non-discriminatory) access to the must-have programming that subscribers demand and which alternative MVPDs thus need to offer a viable competitive option in the marketplace.

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<sup>3</sup> See AT&T Comments at 4-5; DIRECTV Comments at 4-5; Verizon Comments at 6-7.

<sup>4</sup> NCTA Comments at 15-16.

<sup>5</sup> Verizon Comments at 16-17; AT&T Comments at 7-8.

The most obvious example of the program access barriers we continue to face is AT&T's long-drawn out fight to obtain access to the HD streams of MSG's and MSG+'s must-have regional sports programming. Almost two years ago, AT&T filed a program access complaint against Cablevision and its then-subsiary, now-commonly owned, affiliate Madison Square Garden (MSG) Network for refusing to license the HD streams of MSG/MSG+ programming to AT&T. Cablevision and MSG defended their refusal on the ground that such programming is terrestrially-delivered and thus purportedly outside the scope of the program access provisions of the Cable Act. Since then, the Commission ruled (18 months ago) in the *Terrestrial Programming Order* that such programming is within the scope of section 628, and established a rebuttable presumption that a denial of terrestrially-delivered RSN programming (and separately the HD stream of such programming) violates the Act. And, a month ago, the D.C. Circuit upheld that order in all significant respects. Nevertheless, Cablevision/MSG has continued to deny AT&T access to the HD streams of MSG/MSG+ programming.<sup>6</sup>

Cablevision/MSG's actions confirm that, rather than obviating the need for retention and continued enforcement of the exclusive access prohibition (as NCTA claims) in the Commission's program access rules, growing competition in downstream video distribution markets has – if anything – strengthened cable operators incentives to use their control over must have programming to stop such competition in its tracks. If NCTA were correct that cable operators and their programming affiliates could not significantly harm competitors' (like AT&T's) ability to compete by denying them access to such programming, they would not deny those competitors access to that programming and thus reduce the number of potential

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<sup>6</sup> AT&T contacted MSG shortly after the D.C. Circuit released its decision to ask it finally to begin negotiations for an agreement allowing AT&T to carry the programming at issue. Cablevision/MSG declined, and has made clear in recent filings with the Commission that it will not provide that programming unless or until it is ordered to do so by the Commission.

subscribers to (and concomitantly the license fees they receive for) that programming. Cablevision/MSG's actions thus establish that the Commission must not only retain but also vigorously enforce the exclusive access prohibition to achieve Congress's objective of a truly competitive video distribution marketplace. Accordingly, the Commission should reject NCTA's claims.

## **II. THE COMMISSION SHOULD NOT ADOPT RULES MANDATING THE ALLVID APPROACH.**

The Commission should not adopt rules mandating the AllVid approach or any similar proposal that would force MVPDs to unbundle their services and permit CE manufacturers to disintermediate MVPDs from their subscribers. A few manufactures and pro-regulation advocates continue to support the AllVid proposal, claiming that its adoption is necessary to meet the objectives of Section 629 of the Act, and the National Broadband Plan's aim of encouraging broadband deployment and adoption.<sup>7</sup> But the record in the Commission's AllVid proceeding confirms that rules mandating adoption of the AllVid or similar solution is not necessary to facilitate a commercial market for advanced video devices capable of accessing both over-the-top ("OTT") and MVPD services or to promote broadband deployment.<sup>8</sup>

As AT&T and others have shown in the Commission's pending *Video Device Competition* proceeding, the marketplace on its own already is meeting and exceeding the objectives of section 629.<sup>9</sup> In particular, the record in that proceeding illustrates that

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<sup>7</sup> AllVid Alliance Comments at 7-9 (claiming that adoption of the AllVid proposal is necessary to meet the mandate of section 629 of the Act and the objectives of the National Broadband Plan); CEA Comments at 12-13 (claiming that the Commission's failure to implement section 629 and the National Broadband Plan by adopting AllVid has constrained innovation and investment).

<sup>8</sup> See AT&T Comments at 9-10; Verizon Comments at 14.

<sup>9</sup> See *In the Matter of Video Device Competition*, MB Docket No. 10-91, Reply Comments of AT&T at 4-5 (filed Aug. 12, 2010).

manufacturers already are producing and making available at retail devices (such as the X-Box 360) that integrate MVPD and OTT video services, and that commercial efforts to achieve such results are ongoing.<sup>10</sup> It also shows that MVPDs, standard-setting organizations such as DLNA, the RVU Alliance and ATIS, and CE manufacturers are actively working on ways to ensure access to MVPD services by devices available at retail, including developing standards for a gateway device usable with all MVPD services.<sup>11</sup> These efforts already satisfy Congress' objectives in Section 629, and the Commission need not, and indeed cannot, require more.

The record in the *Video Device Competition* proceeding also shows that the AllVid proposal is unnecessary to promote broadband deployment; and in fact may substantially frustrate this objective.<sup>12</sup> In particular, the AllVid proposal would impose substantial costs on MVPDs to remake their systems to support a standard and devices that are untested and for which there is no proven customer demand, forcing them to divert funds needed to expand broadband to unserved or underserved areas.<sup>13</sup>

### **III. CONCLUSION**

Based on the foregoing, the Commission should reject claims by NCTA that competition in the provision of multichannel video programming distribution services has obviated the need to maintain the exclusive access prohibition in the Commission's program access rules, and claims by consumer electronics manufacturers that the Commission should adopt its AllVid proposal to assure the commercial availability of navigation devices.

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<sup>10</sup> *See id.*

<sup>11</sup> *See, e.g.*, CEA Comments at 7; ATIS Comments at 4-5.

<sup>12</sup> *See, e.g.*, AT&T Reply Comments at 9-10.

<sup>13</sup> *Id.* at 13.

Respectfully submitted,

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