

I read the NCTA's letter from Mr. Neal M Goldberg attached to proceedings 10-91, 97-80, 00-67, and 07-269 dated Aug 10 and wish to applaud the industry advances and innovation that he speaks so glowingly of. They are exciting and show that the cable industry is interested in offering their customers the best that technology has to offer. However, none of the innovations that are spoken about in that letter meet the criteria laid out in section 304 of the Telecommunications Act of 1996 (the Act) regarding competition of navigation devices.

Section 304 speaks about the customers of MVPD's having commercial availability "of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor"

The heart of the matter is that the innovation which Mr. Goldberg points to in the letter isn't the point of section 304, competition is the point. The proof of this fact lies in the Sunset provision of section 304. It contains 3 criteria that when met will allow the FCC to end implementation and enforcement of section 304. All 3 of the Sunset criteria are about competition and none of them mention innovation.

Competition can breed many benefits to customers and innovation is just the first. Lower prices for consumers are another major benefit that competition can potentially lead to.

The NCTA wishes us to believe that innovation without true competition is good enough. The Aug 10 letter points to a lot of innovation and even competition that is actually partnerships between MVPD's and other companies. This doesn't qualify as competition according to section 304 because it defines competition as products from "manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor"

The letter adds a footnote that tries to explain how this is nonsense but the wording of section 304 implies that a product manufacturer should be able to make their device without the authorization/approval/permission or assistance of the MVPD. The only way to know if a market is truly competitive is to ask the question "If the Cable company wasn't allowed to lease their set top boxes would a consumer still be able to purchase the cable service and buy a set top box that can decode the signal and provide access to 'multichannel video programming and other services offered over multichannel video programming system'?" The answer to this question is no. Clearly there are set top boxes purchasable that provide access to

linear programming, but that too doesn't meet the criteria of accessing the 'other services' offered by the MVPD. Other services will clearly need to be defined by the FCC but they might include the on-demand content and programming guides offered by the MVPD's.

I felt obligated to write this because it seems that the NCTA is trying to make us believe that their innovation is fulfilling the requirements of the law as set forth in section 304 of the Act. They would like us to believe that because we can buy devices that can access the internet on our TVs and give us Netflix and Hulu and youTube and Pandora and countless other web apps that we should avoid proper implementation of section 304 regarding the MVPD's. They would like us to forget that the law says that we must have other devices commercially available which can access the MVPD's programming including their 'other services'.

Sincerely
Eric Birecki