ALLVID
Tech Company Alliance

October 5, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte Notice - AllVid Tech Company Alliance - MB Docket No. 12-230, CS Docket No. 97-80, PP Docket No. 00-67**

Dear Ms. Dortch:

On October 3, 2012, Robert Schwartz and Monica Desai, counsel to the AllVid Tech Company Alliance (the "Alliance") together with consultant Adam Goldberg met with Henning Schulzrinne, Chief Technology Officer of the Office of Strategic Planning, and the following individuals from the Media Bureau: Steven Broeckaert, Senior Deputy Division Chief, Policy Division; Bill Lake, Bureau Chief; Mary Beth Murphy, Chief, Policy Division; Brendan Murray, Attorney Advisor, Policy Division; Nancy Murphy, Associate Bureau Chief; Alison Neplokh, Chief Engineer; and Jeffrey Neumann, Electronics Engineer, Engineering Division. Participants in the meeting discussed the Alliance's filings in the above-referenced proceeding,[1] specifically: (1) the need for the Media Bureau to provide specific clarification for implementation of and compliance with Section 76.640(b)(4)(iii) of the Commission's rules; and (2) the necessary attributes of an open industry standard and its implementation. During the meeting, the Alliance made the following points:

Need For Clarification

The Alliance stated that any meaningful extension of time, based on progress toward an open standard interface, must clarify what will be considered a compliant implementation, and how compliance will be enforced. The Third R&O[2] reserved the power to assess industry progress toward achieving an open and standard interface. Thus, the clarification element of TiVo's petition is inseparably related to

[1] *See In the Matter of TiVo Inc. Petition for Clarification or Waiver of 47 C.F.R. § 76.640(b)(4), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices,* MB Docket No. 12-230, CS Docket No. 97-80, PP Docket No. 00-67, Comments of the AllVid Tech Company Alliance (Sept. 21, 2012), and Reply Comments of the AllVid Tech Company Alliance (Oct. 1, 2012).
[2] *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 ("Third R&O") (Oct. 14, 2010).

the date extension element. Without clarification, in 18 months or whatever timeframe the Bureau chooses, the result may be more uncertainty, additional waiver applications, and a divergence of implementations that can be remedied only with difficulty or not at all.

The Media Bureau's authority and obligation to clarify and enforce Section 76.1204(b)(4)(iii), as set forth in the Third R&O, are grounded in the core Commission's navigation device regulations:

- Section 76.1201: "No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service."

- Section 76.1202: "No multichannel video programming distributor shall by contract, agreement, patent right, intellectual property right or otherwise prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with such owner or operator...."

- Section 76.1203: When standards are referenced by cable operators, "[s]uch standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service."

- Section 76.1205(a): "Technical information concerning interface parameters that are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request in a timely manner...."

In the Third R&O, the Commission specifically recognized that the standards development process was incomplete so could not *yet* be assessed in terms of "baseline" guidance.[3] Nothing in the Order removes from the Media Bureau the obligation to make such an assessment at the appropriate time. Impacted companies need to understand, for operational and planning purposes, the rationale behind any extension and the Bureau's enforcement expectations once compliance is required.

The origins of Section 76.640(b)(4)(iii) in the Second Report & Order are instructive:[4]

> "Cable subscribers owning unidirectional digital cable televisions or DTV monitors that wish to receive advanced, interactive services ...[need an interface to] ... set a baseline for connectivity ensuring that cable subscribers are able to

[3] *Id.* ¶ 44.

[4] Second Report & Order ¶ 24.

> fully enjoy the range of services offered by their cable provider in a secure, digital format."

Finally, the Alliance noted that mandatory support for the HDMI interface also was included in the Second Report & Order.[5] Hence, to give meaning to Section 76.640(b)(4)(iii), it is incumbent on the Bureau to require that referenced standards set a baseline that allows consumers, through *this* interface, to "fully enjoy the range of services" that are offered by the operator, including full service discovery.

Elements of Clarification

In implementing the Commission's requirement of an open standard, the Bureau has an obligation to be explicit on a basis that will be timely. The Alliance emphasized that at a bare minimum, the Commission should clarify that compliance requires enablement of a competitive guide and tuning. The Bureau also should clarify explicitly that the following examples of standards or implementations would *not* be considered compliant because these do *not* support interactive service discovery:

- Set-top device is programmed to send content only to favored devices.
- Set-top device supports a method of service discovery that is incompatible with standard methods or that passes only "remote UI" data for accessing a service, frustrating interactive navigation via the home network device's user interface.
- Set-top device describes the audiovisual formats it supports in ways differing from those recognized by the standard, resulting in a home network device not displaying content even though it is capable of doing so.
- Set-top device encrypts content sent over the interface in a manner that only "approved" devices are able to decrypt or that require a patent license, secret key, or chip that is not necessary for implementation of the open industry standard.

Consequences Of Failure To Clarify

The Alliance noted that limiting a standard interface's ability to discover necessary guide data would have competitive consequences beyond the market for devices. For example, the result would be that only cable operators would be able to make an integrated offering of MVPD and OTT content. The inability of competitive device makers to make a similar offer would amplify MVPD's leverage over OTT providers by limiting the ability of device makers or their program vendors to compete.

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[5] Second Report & Order ¶ 24; *see also* 47 C.F.R.§ 76.1204(b)(4)(ii).

The NCTA comments, in suggesting that an open standard is not necessary to assure competitive entry, are wrong and go beyond considerations of Section 76.640(b)(4)(iii). Enabling only *some* operator content to be made available to only *some* devices is not consistent with Congress's mandate that the FCC "shall…adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, 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."[6]

Respectfully Submitted,

/s/

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[6] See Section 629(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(a); see also Telecommunications Act of 1996, Pub. L. No. 104-104, § 304, 110 Stat. 56, 125-126 (1996).