

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of Navigation Devices	)	PP Docket No. 00-67
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	
	)	

**COMMENTS OF  
ALLVID TECH COMPANY ALLIANCE  
ON TIVO PETITION FOR RULEMAKING**

The AllVid Tech Company Alliance supports TiVo Inc.’s (“TiVo”) petition<sup>1</sup> for reinstatement of the Commission’s CableCARD technical Support Rules<sup>2</sup> and its Encoding Rules<sup>3</sup> as they pertain to cable operators. These provisions of the Second Report & Order (“Second R&O”) implementing Section 629 of the Communications Act<sup>4</sup> were neither implicated nor discussed on their merits in the D.C. Circuit’s opinion in the

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<sup>1</sup> *Petition for Rulemaking*, CS Dkt. No. 97-80, PP Dkt. No. 00-67 (filed July 16, 2013) (“Petition”).

<sup>2</sup> 47 CFR §§ 76.640, 15.123. *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, Second Report and Order and Second Further Notice of Proposed Rulemaking (rel. Oct. 9, 2003) (“Second R&O”), App. B, at 42 – 50 (“Support Rules”).

<sup>3</sup> 47 CFR §§76.1901 – 1908. Second R&O, App. B, at 50 – 59 (“Encoding Rules”).

<sup>4</sup> Communications Act, Section 629, 47 U.S.C. § 549(a) (“Section 629”).

*EchoStar* case.<sup>5</sup> The references to industry standards that define CableCARD support are utterly noncontroversial and provide vital points of reference and stability for all who would enter or persist in this market. The Encoding Rules protect present and future competitive entrants from discrimination and leveraging in the capabilities of licensed products, under both existing and new technologies. Both sets of rules were vacated on grounds unrelated either to their merits or to the Commission’s authority to enact and implement them.

The Support Rules and Encoding Rules have been in place and effective for a decade without controversy as to their purpose, necessity, or operation. As multichannel video distribution – in particular, cable distribution – moves to successor IP-based technologies, technical references to private sector standards will still be required in the Commission’s rules under the express mandate of Section 629, that the Commission consult with private sector standards organizations in assuring commercial competition from unaffiliated manufacturers and vendors. Achieving workable private sector licenses based on such private sector technologies will require that the Support and Encoding Rules remain in place.

**I. References To Private Sector Industry Standards Have Been Positive And Noncontroversial.**

Section 629 directs the FCC to assure in its regulations the commercial competitive availability of navigation devices “*in consultation with appropriate industry standard-setting organizations.*”<sup>6</sup> In the 1997-1998 period the cable industry came

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<sup>5</sup> *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013, “*EchoStar*”).

<sup>6</sup> 47 USC § 549(a) (emphasis supplied).

forward with a CableCARD solution and the FCC accepted this offer.<sup>7</sup> The initial offer and the FCC’s implementation, however, did not include specific references to underlying technical standards. The ensuing five years devolved into controversy and finger-pointing until the cable and consumer electronics industries, under specific pressure from the Congress and the Commission, ironed out a set of standard references. Competitive entry was not possible without an underlying set of standards references – and even so has proved difficult for competitive entrants that have not had a “level playing field” in other respects.

Now, almost immediately in the wake of the *EchoStar* decision, a cable operator<sup>8</sup> and the Media Bureau<sup>9</sup> have expressed uncertainty about whether, in the absence of an official reference to underlying technical standards, CableCARD remains a sufficiently stable and reliable technology. This reaction, whether or not subscribed to by the Commission,<sup>10</sup> underscores the urgency of reinstating these noncontroversial references. It points as well to the need for references to standards as the Commission addresses

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<sup>7</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Report and Order ¶¶ 76 – 78 and n. 182 (rel. June 24, 1998, “First R&O”).

<sup>8</sup> *In the Matter of Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-8740-Z, MB Dkt. No. 12-238, letter from Paul Glist to Marlene H. Dortch, Sec., FCC, at 3 (Feb. 6, 2013).

<sup>9</sup> *In the Matter of Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-8740-Z, MB Dkt. No. 12-238, CS Dkt. No. 97-80, Memorandum Opinion and Order ¶ 9 (rel. Apr. 18, 2013).

<sup>10</sup> The Consumer Electronics Association has applied for review and TiVo has applied for reconsideration.

successor technologies.<sup>11</sup> Whether invited through stakeholder offer or negotiation, or cited by the FCC as a safe harbor,<sup>12</sup> such references are explicitly required by the Congress in Section 629 and have proved essential to commercial-scale entry. The Alliance, thus, regards the maintenance of these CableCARD Support Rules as foundational to the Commission’s obligation to assure commercial scale entry with respect to successor technologies.

**II. The Encoding Rules Are Essential To The Continued Viability of CableCARD-Reliant Products And To Commercial Entry Based On Any Successor Technology.**

Another impediment to commercial entry prior to 2003 was stakeholder disagreement about whether FCC rules<sup>13</sup> permit an MVPD to impose output and recording restrictions on licensed devices as protection against “harm to the network” or “theft of service.” Entry could not and did not occur until this issue was resolved in Commission regulations.

As TiVo notes,<sup>14</sup> any technologies offered for license will include “compliance” and “robustness” rules, which are required by content owners in the chains of licenses that pertain to products that receive their content. Accordingly, device manufacturers

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<sup>11</sup> The Commission has acknowledged its obligation under Section 629 to address successor technologies. *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Report and Order, ¶ 26 n.162 (rel. Oct. 12, 2012, “Basic Tier Order”).

<sup>12</sup> *See, e.g., In the Matter of Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Dkt. No. 11-154, ¶ 124 (rel. Jan. 13, 2012).

<sup>13</sup> 47 C.F.R. §§ 76.1201, 1203, 1205.

<sup>14</sup> Petition at 18.

must equip their devices to respond to content stream “triggers” that can entirely prevent display, recording, or transmission over a home network. These trigger responses must be designed into products before they come to market. Without encoding rules content owners or distributors can arbitrarily impose constraints on consumer-purchased devices after consumers have invested in them, and can impose constraints not imposed on leased devices. Device manufacturers could not expose customers to such risks, and argued that Sections 76.1201, 1203 and 1205 of the Commission’s rules prohibited MVPDs from imposing such constraints on licensed products.

In September 2000<sup>15</sup> the Commission said it would resolve these issues when brought by petition. Rather than bringing their disputes to the Commission piecemeal and after the fact, the cable and consumer electronics parties jointly proposed the Encoding Rules as a reasonable outcome on which both consumers and MVPDs could rely when making investments in new devices.<sup>16</sup> With only one waiver adjustment for new media,<sup>17</sup> the Encoding Rules have worked for a decade as envisioned by the parties

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<sup>15</sup> *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Further Notice of Proposed Rule Making and Declaratory Ruling, CS Dkt. No. 97-80, ¶ 29 (rel. Sept. 18, 2000).

<sup>16</sup> Letter to Hon. Michael K. Powell, Chairman, FCC from 14 digital television manufacturers and eight cable multisystem operators regarding Consensus Cable MSO-Consumer Electronics Industry Agreement on “Plug & Play” Cable Compatibility and Related Issues, and attachments, filed in CS Dkt. No. 97-80, PP Dkt. 00-67 (Dec. 19, 2002).

<sup>17</sup> *Motion Picture Association of America Petition for Expedited Special Relief; Petition for Waiver of the Commission’s Prohibition on the Use of Selectable Output Control (47 C.F. R. § 76.1903)*, Memorandum Opinion and Order, MB Dkt. No. 08-82, CSR-7947-Z, DA 10-795, ¶¶ 12-18 (rel. May 7, 2010); see *EchoStar*, 704 F.3d at 997-998.

and the Commission– fairly, predictably, and to the benefit of consumers and stakeholders alike.

The sudden absence of Encoding Rules, based on procedural concerns only applicable to satellite operators, again subjects commercial products and those leased by cable operators and other MVPDs to constraints on viewing and recording, through triggers that were accepted in license by manufacturers only with the assurance that Encoding Rules would be in place. This is manifestly unfair to manufacturers, potential entrants, and consumers. The capabilities of devices leased to consumers by cable operators are now a potential bargaining chip in these operators’ negotiations with content owners. The capabilities of retail devices owned by consumers are now subject to constraints imposed by *both* content owners *and* by cable operators – *whether or not* such constraints are also imposed on leased devices.

The Encoding Rules are applicable and relevant to both existing and successor technologies. Having acknowledged that a successor technology must be referenced in Commission policy and regulations implementing Section 629,<sup>18</sup> the Commission should not dismantle the foundation for achieving entry through private sector licensing of new technologies. The record is clear that the Encoding Rules are key to achieving commercial entry based on private sector license rather than on government mandate. In practice these rules have worked exactly as contemplated. There is no valid reason for the Commission not to restore them with respect to cable operators.

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<sup>18</sup> Basic Tier Order n. 162.

## CONCLUSION

The CableCARD Support Rules and the Encoding Rules have been stable, successful, and pro-consumer elements of an otherwise difficult implementation of Section 629. To assure the continued viability of CableCARD-reliant products and to provide for a successor technology the Commission should reinstate these regulations as they pertain to cable operators.

Respectfully submitted,

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