

**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)	
)	

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

October 25, 2013

TABLE OF CONTENTS

I. THE COMMISSION SHOULD RETAIN ITS POLICIES IMPLEMENTING SECTION 629. 2

II. BY THEIR LACK OF SUBSTANTIVE OBJECTION THE COMMENTS DEMONSTRATE THAT THE CABLECARD SUPPORT RULES ARE NONCONTROVERSIAL AND SHOULD BE REINSTATED FORTHWITH. 4

III. ASSERTIONS THAT CABLECARDS WILL CONTINUE TO BE SUPPORTED IN THE ABSENCE OF THE SUPPORT RULES ARE UNCONVINCING. 5

IV. THE ENCODING RULES ARE NECESSARY TO IMPLEMENT SECTION 629..... 6

V. THE OBJECTIONS TO REINSTATING THE ENCODING RULES ARE STRATEGIC RATHER THAN SUBSTANTIVE AND ARE OFFERED ON CONFLICTING BASES..... 8

 A. No Comment Finds Fault With The Encoding Rule Outcomes. 8

 B. Nothing In *EchoStar* Questions The Commission’s Authority To Grant The Relief Petitioned For By TiVo..... 9

VI. THE FCC SHOULD RETAIN ITS CABLECARD POLICIES AND THUS REINSTATE ITS RULES UNTIL A SUCCESSOR TECHNOLOGY AND COMMON INTERFACE ARE IN PLACE..... 12

VII. ANY RULEMAKING NOTICE ADDRESSING ADDITIONAL MATTERS SHOULD PROPOSE A STANDARDS-BASED SUCCESSOR INTERFACE..... 13

CONCLUSION..... 14

**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)	
)	

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

In its comments supporting TiVo Inc.’s (“TiVo”) petition¹ for reinstatement of the Commission’s CableCARD technical Support Rules² and its Encoding Rules³ implementing Section 629 of the Communications Act,⁴ the AllVid Tech Company Alliance emphasized that “these provisions of the Second Report & Order (“Second R&O”) were neither implicated nor discussed on their merits in the D.C. Circuit’s opinion in the *EchoStar* case.”⁵ Indeed, no party submitting comments has pointed to any aspect of the *EchoStar* case or the court’s opinion that is inconsistent with these rules or

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

² 47 C.F.R. §§ 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”), 18 FCC Rcd. 20885, 20926 – 34.

³ 47 C.F.R. §§76.1901 – 1908. Second R&O, App. B, at 50 – 59 (“Encoding Rules”), 18 FCC Rcd. at 20934 – 45.

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

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

requires that FCC policy and precedent be reversed. Nor do any commenters find any substantive fault with either the CableCARD Support Rules or the Encoding Rules. Instead, the comments that do not support the TiVo petition press alternative agendas. Future Commission consideration of these agendas, even if warranted, would not justify an FCC failure to grant TiVo's petition.

The Alliance⁶ and others⁷ have urged the Commission to make identifying a successor common interface to CableCARD a priority, and the Commission has recognized this need.⁸ If in a rulemaking stemming from this proceeding the Commission addresses anything beyond the relief TiVo requested, it should propose that a successor interface be referenced in regulation, based on the specifications and draft regulations that the Alliance filed on September 20, 2011.⁹

I. THE COMMISSION SHOULD RETAIN ITS POLICIES IMPLEMENTING SECTION 629.

The Commission should reinstate cable-only rules implementing Section 629 because: (1) from a policy standpoint, the need for the rules as originally adopted still exists in the cable-only context; and (2) from a legal standpoint, there is nothing in the *EchoStar* opinion that requires the Commission to change the Section 629 implementing rules as applied in the cable-only context.

⁶ Letter from Robert S. Schwartz, Counsel, AllVid Tech Company Alliance to Marlene H. Dortch, Sec. FCC Re: Video Device Competition, MB Dkt. No. 10-91; Commercial Availability of Navigation Devices, CS Dkt. No. 97-80; Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Dkt. No. 00-67 (Sept. 20, 2011, "Alliance Framework").

⁷ *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of the Consumer Electronics Association at 10 – 11 (Nov. 28, 2011); *In the Matter of TiVo Petition for Rulemaking to Reinstate the Commissions Second Report & Order Implementing Section 629 of the Act and Associated Rules*, Comments of Public Knowledge at 2 (Sept. 16, 2013).

⁸ *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Report and Order at ¶ 35 n.162 (rel. Oct. 12, 2012, "Basic Tier Order"), 27 FCC Rcd. 12786, 12810.

⁹ See attachments to Alliance Framework.

The purpose of Section 629 is to assure that consumers have the opportunity to obtain navigation devices in an open and competitive marketplace.¹⁰ The Commission developed rules to promote consumer confidence that competitive products will work regardless of the cable system to which they are connected.¹¹ Nothing in the *EchoStar* decision suggests that the Commission must or should deviate from this purpose. The court did not discuss the Support Rules at all. With respect to the Encoding Rules, the court explicitly recognized that cable-only encoding rules “may meet consumer expectations with respect to the market for cable devices.”¹² This was an acknowledgement – not an overruling – of the Commission’s purpose in implementing the Encoding Rules in the Second Report & Order. As Tivo explained in its Petition, “the Court made clear that it was not [negatively] addressing *any* element of the Second R&O that applied only to cable systems, cable operators, and cable devices.”¹³

Where the court has not questioned the rationale or authority of the Commission to implement these Encoding Rules, it would be arbitrary for the Commission not to proceed with TiVo’s petition for a rulemaking to reinstate these rules. Since the Second R&O, nothing has changed to upset the Commission’s determination that the reasonable expectations of consumers, in purchasing products that are subject to the DFAST license, require encoding rules. As TiVo states in its Petition, these are rules “that have been in

¹⁰ See Second R&O at ¶ 3, 18 FCC Rcd. at 20887 – 88.

¹¹ See *id.* ¶ 4.

¹² See *EchoStar* at 997.

¹³ See Petition at 15. The argument that *EchoStar* undermined the Commission’s authority to implement any encoding rules, or these Encoding Rules on a cable-only basis, is incorrect – see *infra* Section V.

place for a decade and have been relied upon by cable operators, content providers, device manufacturers, and consumers.”¹⁴

II. BY THEIR LACK OF SUBSTANTIVE OBJECTION THE COMMENTS DEMONSTRATE THAT THE CABLECARD SUPPORT RULES ARE NONCONTROVERSIAL AND SHOULD BE REINSTATED FORTHWITH.

The CableCARD Support Rules are fundamental to maintaining a nationally portable, standards-based interface for retail devices. The objections by NCTA and Verizon to reinstating these rules bear no relationship to anything alleged or discussed in the *EchoStar* case. NCTA repeatedly characterizes these rules as “imposed”¹⁵ by the FCC. This is revisionist history at best – these rules actually were *proposed* by NCTA, its members, and the consumer electronics industry.¹⁶ Neither NCTA nor Verizon discusses anything substantive about the rules themselves, or how they have operated in practice. Verizon, instead, wants to do away with the core obligation to supply CableCARDS, which – as TiVo establishes – would require the Commission to alter its entire approach to implanting Section 629.¹⁷ Verizon, like NCTA, has nothing to say about whether these Rules accomplish their stated objective of making CableCARD installation and functions more reliable.

Other comments merely mention the Support Rules in passing. ACA does not object to the Support Rules, but advocates for a common reliance waiver for “small”

¹⁴ See Petition at 2.

¹⁵ NCTA Comments at 2 – 4, 10 – 11.

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

¹⁷ Verizon Comments at 3 – 5.

operators.¹⁸ The comments of the “Program Network Interests” focus on the Encoding Rules, wondering only in passing whether Support Rules are “necessary.”¹⁹ These nominally adverse comments do not find fault with the Support Rules’ substance because the rules are, as TiVo’s Petition establishes, noncontroversial.

III. ASSERTIONS THAT CABLECARDS WILL CONTINUE TO BE SUPPORTED IN THE ABSENCE OF THE SUPPORT RULES ARE UNCONVINCING.

While insisting in this proceeding that CableCARDS will be supported in the absence of the Support Rules, NCTA, its members, and Verizon have taken positions inconsistent with such an outcome. NCTA cites a duty to support “separate security” under Section 76.1204(a)(1),²⁰ but in a footnote asserts that *EchoStar* “arguably” invalidates specific references in FCC rules to CableCARDS.²¹ By seeking to cast doubt on the CableCARD obligation and by baselessly opposing the reinstatement of rules that NCTA itself proposed, NCTA undermines its own assertion that the cable industry is committed to CableCARDS and that its members will continue to adhere to and support the private sector standards on which the CableCARD interface is based. Verizon’s position is plainer: Verizon no longer wants there to be CableCARD rules with which it would need to comply.²²

¹⁸ ACA Comments at 6 – 10.

¹⁹ Program Network Interests Comments at 2. The Program Network Interests include 21st Century Fox, CBS Corporation, Time Warner Inc., Viacom Inc., and The Walt Disney Company.

²⁰ NCTA Comments at 4 & n.11.

²¹ *Id.* at 3, n.8. The Alliance does not agree with NCTA’s strained “arguable” analysis, which appears to be based on comments by member Charter in another proceeding. See *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, Opposition of Charter Communications, Inc. to Application for Review at 12 – 13 (June 3, 2013). Charter’s attempt to entirely negate the CableCARD requirement appears to be a basis on which NCTA now also claims that the requirement to support and supply CableCARDS has become “arguable.”

²² Verizon Comments at 1, 3 – 5.

If NCTA and its members wish to be relieved of their CableCARD-related obligations, this should occur only through notice of and public comment on a petition for such relief – not through a failure to reinstate rules that are unrelated to the substantive issue considered by the court in *EchoStar*. If NCTA and its members do not wish to be relieved of their obligation to support CableCARDs, there is no valid reason for them to object to reinstatement of these technical CableCARD Support Rules. Either way, NCTA’s objection to reinstating the Support Rules is baseless.

IV. THE ENCODING RULES ARE NECESSARY TO IMPLEMENT SECTION 629.

The Encoding Rules are necessary to implement Sections 76.1201, 76.1203 and 76.1205 of the Commission’s rules. Because FCC rules already provide for oversight of copy protection impositions under these sections, the absence of the implementing Encoding Rules creates a procedural vacuum likely to be filled by *ad hoc* petitions.

Pursuant to Sections 76.1201, 76.1203 and 76.1205 of the Commission’s rules and the Further Notice and Declaratory Ruling released in September 2000, the FCC must determine whether it is consistent with these rules for a cable operator to impose copy protection and interface restrictions on consumer-provided navigation devices.²³ But without the Encoding Rules, it has no established means for doing so.

In addition to being based on the 1998 Digital Millennium Copyright Act,²⁴ the Encoding Rules are a direct implementation of the First & Report Order released in 1998

²³ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, CS Dkt. No. 97-80, PP Dkt. No 00-67, Further Notice of Proposed Rule Making and Declaratory Ruling at ¶¶ 25 – 29 (rel. Sept. 18, 2000) (“Further Notice”), 15 FCC Rcd. 18199, 18210 – 11.

²⁴ See discussions in Petition at 8 – 9; CEA Comments at 4 – 6.

and the regulations enacted therewith. As TiVo²⁵ and CEA²⁶ recount, there was little progress toward commercial entry after the 1998 First Report & Order.²⁷ At that time, manufacturers and retailers complained that licenses offered by CableLabs required consumers' products to respond to technical "triggers" intended to prevent home recording (judged a fair use by the Supreme Court²⁸), rather than only addressing "theft of service" and "harm to the network," as provided by these Commission's rules.²⁹ In direct response, the Commission issued a Further Notice and Declaratory Ruling, stating that it would resolve the status of copy protection restrictions under Sections 76.1201, 76.1203 and 76.1205 upon petition of a party who had signed a license containing such restrictions. In the same order, to avoid the uncertainty and delay of an *ad hoc* process, the Commission *directed* the consumer electronics and cable stakeholders to submit an "agreed draft" of the DFAST license for CableCARD interface technology.³⁰

The parties in due course negotiated an agreed draft of DFAST, plus draft Encoding Rules to address the copy protection impasse. In the CE-Cable letter to the FCC, they promised that this license would be the "agreed" draft sought by the Commission *provided* that the Encoding Rules (beyond the parties' power to implement them privately) would be adopted by the FCC after public notice and comment.³¹ As CEA points out,³² the absence of Encoding Rules now puts FCC regulations back where

²⁵ Petition at 3, 8 – 9.

²⁶ CEA Comments at 4 – 6.

²⁷ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Report and Order (rel. June 24, 1998) ("First R&O"), 13 FCC Rcd. 14775.

²⁸ *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984).

²⁹ Further Notice at ¶¶ 18 – 24, 15 FCC Rcd. at 18205 – 09.

³⁰ See CEA Comments, discussion at 7 – 8.

³¹ CE-Cable letter at 2 -3.

³² CEA Comments at 9.

they were on September 18, 2000, the day of the release of the Further Notice and Declaratory Ruling. The Commission insisted on an “agreed” version of the DFAST license in recognition that its *ad hoc* petition process would be unwieldy and unreliable in planning product entry. It remains so today.

V. THE OBJECTIONS TO REINSTATING THE ENCODING RULES ARE STRATEGIC RATHER THAN SUBSTANTIVE AND ARE OFFERED ON CONFLICTING BASES.

The comments opposing reinstatement of the Encoding Rules do not criticize any of their outcomes. Rather, they challenge their “necessity” while at the same time wishing to be free to ignore them. The assertion that *EchoStar* addressed the Commission’s authority to adopt these rules with respect to cable services is flatly incorrect.

A. No Comment Finds Fault With The Encoding Rule Outcomes.

The factual premises on which commenters base their assertions that Encoding Rules are “unnecessary” are in opposition to each other. NCTA insists that any prospect of a content provider or distributor shutting off a consumer’s ability to record or to send content to another device in the home is speculative at best.³³ Verizon says there is “no evidence” that content owner interests or conduct will change.³⁴ The Program Network Interests, however, provide precisely such evidence. They argue against reinstatement because they want to modify customary consumer practice and expectation. The Program Network Interests admit they want to move forward in this area “unfettered by

³³ NCTA Comments at 15 – 16.

³⁴ Verizon Comments at 9. Of course, with the Encoding Rules in effect, contrary conduct would have violated FCC regulations.

legacy regulations”³⁵ that would otherwise require advance notice and opportunity for public comment.

Like the comments of NCTA and Verizon, the Program Network Interests’ comments do not criticize the specific outcomes set forth in the Rules or provide any examples of what the commenters would do differently. They focus instead on purportedly “burdensome” public notice and waiver procedures. The only example cited, however, pertains to a petition by the Motion Picture Association of America (MPAA) requesting relief that in technical terms would have been far broader than the objectives described in the petition – as the Commission noted, even several organizations that supported the MPAA petition admitted that it was too broad.³⁶ The Media Bureau denied MPAA’s petition on this basis but ultimately granted, to “MVPDs that contract to provide this service,”³⁷ a more limited waiver.³⁸ The delay was a product of the petition’s over-reaching, not any lack in the rule. As the Bureau said in conclusion, “When the Commission adopted the prohibition on SOC, it specifically contemplated waivers for high value content to facilitate new business models.”³⁹

B. Nothing In *EchoStar* Questions The Commission’s Authority To Grant The Relief Petitioned For By TiVo.

The Comments of NCTA, Verizon, and the Program Network Interests similarly fail to identify anything in *EchoStar* that undermines the Commission’s actual authority

³⁵ Program Network Interests Comments at 1.

³⁶ *In the Matter of 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*, MB Docket No. 08-82, Memorandum Opinion and Order at ¶ 12 & n.42 (May 7, 2010), 25 FCC Rcd. 4799, 4805.

³⁷ *Id.* at ¶ 1 & n.2, 25 FCC Rcd. at 4799.

³⁸ *Id.* at ¶ 13 (“It is not our intention to grant such an open-ended waiver”), 25 FCC Rcd. at 4805 – 06.

³⁹ *Id.* at ¶ 19, 25 FCC Rcd. at 4808. SOC is an acronym for Selectable Output Control.

to adopt these important, well-settled rules in the cable-only context. NCTA argues only that nothing in the statute “requires” the Commission to reinstate cable-only encoding rules; however, NCTA concedes that the court did not question whether the Commission could have adopted cable-only rules.⁴⁰ Indeed, NCTA previously asserted that “the Commission has jurisdiction to impose encoding rules on all MVPDs, deriving its authority from Sections 629, 624A and 336 of the Communications Act.”⁴¹ The actual thrust of NCTA’s comments is to question the core DBS forbearance decision made by the Commission in 1998.⁴² The cable industry lost its earlier challenge to the Commission’s authority to implement this policy.⁴³ NCTA’s proper avenue to challenge this policy would be to pursue its own petition.

Verizon argues that *EchoStar* undermines the jurisdictional basis for the Encoding Rules, but it is incorrect. Verizon reads the court’s language out of context, to assert that the court concluded that the Commission lacks *any* authority to implement “encoding rules,”⁴⁴ whereas the court was crystal clear that it was addressing “the encoding rules *at issue*”⁴⁵ – *i.e.*, the rules that cover *all MVPDs*, not just cable. The court noted that the Commission’s core authority to implement encoding rules was not an issue in the case: “Neither side disputes that the encoding rules, through their application to cable and satellite broadcasts, qualify as regulations of ‘radio and wire communication service’ under Title I. At issue instead is whether the encoding rules were reasonably ancillary to

⁴⁰ NCTA Comments at n.52.

⁴¹ *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, Comments of NCTA, at iii (Apr. 28, 2003).

⁴² First R&O ¶¶ 22, 64 – 66, 13 FCC Rcd. at 14783, 4800 – 02.

⁴³ *Charter Communications, Inc. v. FCC*, 460 F.3d 31, 43 – 44 (D.C. Cir. 2006).

⁴⁴ Verizon Comments at 6.

⁴⁵ *EchoStar* at 998.

the FCC's effective execution of its duties under either § 629 or § 624A.” What the court then said about Section 629 was: “The FCC is not authorized under § 629 to take any action that lessens the competitive pressures *posed by satellite providers* in order to induce cable operators to ratify an MOU the agency favors.”⁴⁶ The court observed that under Section 629, the Commission has an obligation to assure that devices meet consumer expectations, and that in this context cable-only encoding rules “may meet consumer expectations with respect to the market for cable devices.”⁴⁷ Similarly, the court observed regarding Section 624A that “there is every reason to believe Section 624A was directed at cable systems alone.”⁴⁸

Judge Edwards, concurring, was explicit that in proper context the Commission has authority to implement encoding rules covering not only on cable services, but all MVPDs: “The statute does not by its terms prohibit the requirement of encoding rules. Rather, any challenge to the agency's exercise of its discretion under Section 629 must take into account the circumstances presented and the Commission's explanation for the action in question.”⁴⁹ Noting that the petitioner in the case before them had conceded the Commission's right to implement encoding rules on cable providers, Judge Edwards concluded, “I agree that, in this case, the FCC has failed to show the necessary link between the imposition of encoding rules *on satellite carriers* and the mandate of Section 629.”⁵⁰

⁴⁶ *Id.* (emphasis supplied).

⁴⁷ *See EchoStar* at 997.

⁴⁸ *Id.* at 999.

⁴⁹ *Id.* at 1001.

⁵⁰ *Id.* (emphasis supplied)

**VI. THE FCC SHOULD RETAIN ITS CABLECARD POLICIES AND
THUS REINSTATE ITS RULES UNTIL A SUCCESSOR
TECHNOLOGY AND COMMON INTERFACE ARE IN PLACE.**

Opponents of the TiVo petition overlook the fact that Section 629 remains codified. It requires the Commission, in consultation with appropriate industry standards organizations, to *assure*, in its regulations, the commercial availability of independently sourced navigation devices for MVPD programming and services. The FCC and virtually all stakeholders acknowledge that the CableCARD interface is an interim solution in need of a successor.⁵¹ As TiVo demonstrates in its Petition,⁵² any successor solution must be built on (1) a common interface based on private sector industry standards as referenced in FCC regulations, and (2) Encoding Rules to assure that programming and services passing over the common interface are not subject to the sort of discriminatory licensing forbidden by Sections 76.1201, 76.1203, and 76.1205 of the Commission's rules.

Opponents of TiVo's petition completely ignore these requirements. NCTA cites various "app" approaches as already providing a successor, despite the fact that these are

⁵¹ *Connecting America: The National Broadband Plan* (Mar. 16, 2010) ("National Broadband Plan" or "NBP"), Chapter 4.2 and Recommendation 4.12; *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, Notice of Inquiry at ¶¶ 3, 14 & n.38 (rel. Apr. 21, 2010) (quoting letter from Kyle McSlarrow of NCTA "expressing support for a retail market in which an MVPD customer would not have to rely on equipment from the operator to access video services from any MVPD and the Internet and in which the customer would receive the ability to search across multiple platforms and to move video content between different devices in the home and to do so in a way that promotes continued innovation, maximizes consumer benefits, and ensures competitive neutrality" ("NOI"), 25 FCC Rcd. 4275, 4276, 4280; *In the Matter of Video Device Competition*, MB Dkt. No. 10-91, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Comments of CEA and CERC on NOI at 21 (July 13, 2010); Basic Tier R&O at n.162, 27 FCC Rcd. 12810.

⁵² Petition at 23 – 24.

not based on private sector industry standards, as Section 629 requires.⁵³ The Commission has never deemed any such operator-specific patchwork applications to be a substitute for a nationally interoperable interface. Verizon⁵⁴ and the Program Network Interests⁵⁵ similarly make only vague references to technologies that do not provide any standards-based common interface. Such an approach would move the Commission *away* from the sort of standard and nondiscriminatory solution that the FCC’s rules have required since 1998.⁵⁶ The importance of CableCARD as a reliable standards-based interface was confirmed in the Third Report & Order, which was in no way referenced or addressed in *EchoStar*.⁵⁷

VII. ANY RULEMAKING NOTICE ADDRESSING ADDITIONAL MATTERS SHOULD PROPOSE A STANDARDS-BASED SUCCESSOR INTERFACE.

Any Commission rulemaking seeking comment beyond the scope of the issues identified by TiVo should address the need for a successor interface. The Alliance Framework for such an interface, which was submitted in September 2011, provides the Commission with a strong starting point. The Commission should craft proposed rules making reference to this Alliance Framework.

⁵³ Section 629 requires the Commission to adopt regulations assuring commercial availability of navigation devices” in consultation with appropriate industry standard-setting organizations.”

⁵⁴ Verizon Comments at 3 – 5.

⁵⁵ Program Network Comments at 1 – 2.

⁵⁶ The Commission has never, in its Video Competition Reports or elsewhere, made any finding that the “assurance” in regulation required by Section 629 has been fulfilled by occurrences in the marketplace. *See, e.g., In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, at ¶¶ 354 – 365 (rel. July 22, 2013), 28 FCC Rcd. 10496, 10671 – 77.

⁵⁷ NCTA does not argue that the Third R&O is no longer effective, it just notes the perceived uncertainty that one its members has endeavored to exploit.

CONCLUSION

To assure continued viability of CableCARD-reliant products the Commission should reinstate the Encoding and Support regulations as they pertain to cable operators. If the Commission considers any additional matters in this proceeding, it should propose a successor technology based on common, private sector industry standards referenced in Commission regulations.

Respectfully submitted,

Robert S. Schwartz

Robert S. Schwartz
Constantine Cannon LLP
1301 K Street, N.W., 1050 East
Washington, D.C. 20005
202 204-3508

Jeffrey L. Turner
Monica Shah Desai
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037
202 457-6434

October 25, 2013