

November 25, 2013

Monica Desai
Direct Tel: 202-457-7535
Direct Fax: 202-457-6315
mdesai@pattonboggs.com

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

Re: **Notice of Ex Parte: MB Docket Nos. 10-91 and 07-269, CS Docket No. 97-80, and PP Docket No. 00-67 – AllVid Tech Company Alliance**

Dear Ms. Dortch:

On November 21, 2013, the undersigned, as counsel to the AllVid Tech Company Alliance (“the Alliance”), along with Adam Goldberg, a consultant to the Alliance, met with Maria Kirby, Legal Advisor to Chairman Wheeler. The purpose of the meeting was to urge the Commission to update its regulations implementing Section 629 of the Communications Act, so as to assure broadly based, commercially competitive entry into the marketplace for accessing multichannel video programming and services. We also discussed the pending petitions before the Commission and the Media Bureau on which the Alliance has commented.

We emphasized that the purpose of Section 629 of the Communications Act – dating back to its enactment in 1996 – is to assure that consumers have the opportunity to access the full range of programming and services offered by MVPDs through a competitive retail market for navigation devices.¹ To this end, Congress in Section 629 specifically requires:

The Commission shall, in consultation with appropriate industry standard-setting organizations, 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.²

The Alliance was encouraged in 2010 when the Commission issued its National Broadband Plan, emphasizing the importance of achieving Section 629’s objective of assuring, in its regulations, a competitive marketplace by “initiat[ing] a proceeding to ensure that all multichannel video programming distributors (MVPDs) install a gateway device or equivalent functionality in all new

¹ See *Implementation of Section 304 of the Telecommunications Act of 1996, et al.*, CS Docket No. 97-80, *et al.*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885, ¶ 3 (2003).

² 47 U.S.C. § 549(a).

November 25, 2013

Page 2

subscriber homes and in all homes requiring replacement set-top boxes.”³ More specifically, the Commission has recognized⁴ that a successor common interface is necessary to move forward from the cable-only CableCARD interface, which operators are moving away from, toward IP-based interfaces that save bandwidth and better mesh with home and online networks.

The Alliance is hopeful that this Commission will recognize the importance of effectuating the mandate of Section 629, and the value in consumers having true choice with respect to how they access multichannel video programming, as Congress envisioned. It is not enough to point to proprietary technologies that only work for limited services and with only particular systems. Consumers should not be limited to renting MVPD devices with little control or innovation in how they view MVPD video programming and services. A competitive marketplace will allow consumers to choose the best technologies and products personalized to their preferences, instead of having to rely on the decisions that MVPDs have made for them.

We emphasized that to achieve the truly competitive marketplace envisioned by Congress, FCC action should include references to private sector technical standards that support interoperability and scale. In September 2011, the Alliance submitted a set of draft regulations that included references to existing and developing private sector standards that would comprise an IP-based interface common to all MVPDs. The Alliance also urged the Commission to seek public comment through a Notice of Proposed Rulemaking aimed at identifying a successor interface to CableCARD.⁵ As this administration has emphasized, interoperability standards are important to ensure that “equipment or software from different vendors [can] work together to communicate” and allow “new, innovative creations to work with older, established services.”⁶ The Alliance continues to urge the Commission to issue a Notice of Proposed Rulemaking seeking comment on opening the market for device competition in rendering programming and services, as required by Section 629, and on an IP-based gateway link between external and home networks, as presented in Recommendation 4.12 of the National Broadband Plan.

Additionally, we discussed the Alliance’s support for CEA’s Application for Review of the waiver granted by the Media Bureau to Charter Communications, Inc.,⁷ which substantially relieved Charter of its obligations with respect to CableCARDs, and for TiVo’s Petition for Rulemaking to reinstate

³ *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, Section 4.2, at 50 (2010).

⁴ See *Basic Service Tier Encryption, et al.*, MB Docket No. 11-169, Report and Order, 27 FCC Rcd 12786, n. 162 (2012).

⁵ See Letter from Robert S. Schwartz, Counsel, AllVid Tech Company Alliance, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, MB Docket No. 10-91, *et al.* (filed Sept. 20, 2011). In a stakeholder roundtable convened by the Media Bureau later that month, the technical viability of an interface based on these private sector standards was not seriously questioned.

⁶ Exec. Office of the President, Nat’l Sci. & Tech. Council, A Policy Framework for the 21st Century Grid: Enabling Our Secure Energy Future at 26 (June 2011) (*citing* PCAST 2010).

⁷ See Reply Comments of the AllVid Tech Company Alliance, MB Docket No. 12-328, *et al.* (filed Dec. 10, 2012) (“Alliance Dec. 10, 2012 Reply Comments”).

November 25, 2013

Page 3

the Commission's Encoding and Technical Support rules implementing Section 629.⁸ We emphasized that this Commission needs to end the regime of "regulation by waiver" of Section 629, about which the Alliance, CEA, and Public Knowledge repeatedly have expressed concerns.⁹

This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules.

Respectfully submitted,



Monica S. Desai
Jeffrey L. Turner
Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-7535

Robert S. Schwartz
Constantine Cannon LLP
1301 K Street, N.W., Suite 1050 East
Washington, DC 20005
(202) 204-3508

Counsel to the AllVid Tech Company Alliance

cc:

Maria Kirby

⁸ See Comments of the AllVid Tech Company Alliance, CS Docket No. 97-80, *et al.* (filed Oct. 25, 2013); Reply Comments of the AllVid Tech Company Alliance, CS Docket No. 97-80, *et al.* (filed Sept. 16, 2013).

⁹ See, e.g., Comments of the Consumer Electronics Association, MB Docket No. 11-169, *et al.*, at 4-7 (filed Nov. 28, 2011); Comments of Public Knowledge and Media Access Project, MB Docket No. 11-169, *et al.*, at 1, n. 1 (filed Dec. 12, 2011); Reply Comments of the AllVid Tech Company Alliance, MB Docket No. 11-169, *et al.*, at 3 (filed Dec. 12, 2011); Opposition of the Consumer Electronics Association, MB Docket No. 12-328, *et al.*, at 5-9 (filed Nov. 30, 2012); Alliance Dec. 10, 2012 Reply Comments at 2-3.