

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**ANNUAL ASSESSMENT OF THE STATUS OF
COMPETITION IN THE MARKET FOR THE
DELIVERY OF VIDEO PROGRAMMING**

MB Docket No. 14-16

REPLY COMMENTS OF DIRECTV, LLC

DIRECTV, LLC (“DIRECTV”) submits these brief reply comments in response to two issues raised in the initial comments in this proceeding.¹

- Cable interests argue that cable operators no longer possess the incentive and ability to withhold affiliated programming. Yet the Commission has recently and repeatedly held otherwise, and nothing material has changed in this regard.
- The “AllVid Tech Company Alliance” asks the Commission to resuscitate a proposal under which the Commission would mandate a single transmission interface for all multichannel video programming distributors (“MVPDs”). If such massive regulatory intervention were ever appropriate (and DIRECTV believes it never was), that need has surely evaporated in today’s world where MVPDs and non-MVPDs alike *already* deliver the full range of content to nearly every conceivable device.

¹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 29 FCC Rcd. 1597 (2014) (“NOI”).

I. CABLE OPERATORS STILL MAINTAIN THE INCENTIVE AND ABILITY TO WITHHOLD AFFILIATED PROGRAMMING

The Free State Foundation argues that the Commission should eliminate its program access rules.² The National Cable & Telecommunications Association (“NCTA”) similarly suggests that the underpinnings of those rules—cable’s dominant market share and the vertical integration of many key cable networks—no longer exists.³ According to these commenters, cable operators no longer have the incentive and ability to withhold key programming. This is wrong on all counts.

NCTA cites cable’s declining *national* market share.⁴ It is now beyond debate, however, that national market share numbers are not the only relevant figure when it comes to withholding. Indeed, national market share is often far less relevant than market share within particular geographic areas.⁵ With respect to national programming, the analysis must consider not only the national market share, but also control of the largest markets (such as New York and Los Angeles), as national programmers will not want to lose access to such critical areas of the country.⁶ With respect to broadcast programming, the key figure is market share within the

² Comments of Free State Foundation at 12, MB Docket No. 14-16 (filed Mar. 21, 2014).

³ Comments of the National Cable & Telecommunications Association at 4-6, 9-11, MB Docket No. 14-16 (filed Mar. 21, 2014) (“NCTA Comments”).

⁴ *Id.* at 4-6.

⁵ *Revision of the Commission’s Program Access Rules*, 27 FCC Rcd. 12605, ¶ 17 (2012) (“*2012 Exclusivity Order*”) (“As the Commission explained previously, the profitability of exclusivity increases as the number of subscribers controlled by the vertically integrated cable operator increases. In past extension decisions, the Commission has analyzed the aggregate market share of cable operators on a national and regional basis to assess the profitability of exclusivity.”)

⁶ *E.g.*, Liana Baker, “Comcast Takeover of Time Warner Cable to Reshape U.S. Pay TV,” REUTERS, Feb. 13, 2014, *available at* <http://www.reuters.com/article/2014/02/13/us-comcast-timewarnercable-idUSBREA1C05A20140213> (quoting an analyst as describing the impetus for the Comcast-Time Warner transaction: “For Comcast, adding New York and Los Angeles has advertising potential, along with Time Warner Cable’s sports assets, which provides an acquisition target that is simply too compelling to ignore[.]”).

relevant designated market area (“DMA”).⁷ With respect to regional sports networks (“RSNs”), what matters is market share within the RSN’s footprint—although the Commission often looks to DMAs as a convenient proxy.⁸

On all of these scores, cable maintains its dominant position. Just two years ago, the Commission found that “[o]n a regional basis. . . there remain markets where cable operators have a substantial share of subscribers.”⁹ It found that “the cable industry’s share of MVPD subscribers in certain DMAs remains above or near both the 67 percent level and the 78 percent level that the Commission has previously found to be sufficient to make exclusivity a profitable strategy.”¹⁰ The record contains no evidence that this has changed materially. Indeed, the pending merger between Comcast and Time Warner cable promises to *increase* concentration in many DMAs.¹¹

Cable’s dominance through regional clustering has had a predictable effect on vertical integration as well. As the Commission found two years ago, more than *half* of all RSNs are affiliated with cable operators.¹² This trend persists, as cable operators have continued the pattern identified by DIRECTV nearly a decade ago of overpaying for sports rights, starting new

⁷ See, e.g., *Comcast Corp., General Electric Co. and NBC Universal, Inc.*, 26 FCC Rcd. 4238, App. B., ¶¶ 2 *et seq.* (2011) (examining potential of foreclosure for broadcast programming within particular DMAs).

⁸ *2012 Exclusivity Order*, ¶ 17.

⁹ *Id.*, ¶ 18.

¹⁰ *Id.*

¹¹ See Application of Comcast Corp. and Time Warner Cable, Inc. at 128, MB Docket No. 14-57 (filed Apr. 8, 2014) (providing map of respective companies’ service areas).

¹² See *2012 Exclusivity Order* at App. G (providing breakdown).

RSNs, and then forcing others to pay an inflated price or forego must-have programming.¹³ One need only ask fans of the Los Angeles Dodgers—the broadcast rights of which are controlled by Time Warner Cable and whose games are available only on Time Warner Cable—if anything has changed in this regard.¹⁴

II. THE COMMISSION SHOULD NOT RESUSCITATE THE ALLVID PROCEEDING

The AllVid Tech Alliance and its allies seek to revive the “AllVid” proceeding, under which the Commission would impose a universal, mandatory transmission interface for all MVPDs.¹⁵ In order to pursue such an extraordinary regulatory intrusion, the government would have to identify and mandate the use of some “lowest common denominator” transmission standard upon every MVPD—from the least advanced cable operator to the most advanced satellite system—and every MVPD would have to reengineer its system from the ground up to comply.

This proposal was thoroughly vetted when the concept was first introduced in 2010.¹⁶ DIRECTV’s concerns now are the same as they were then. First, such heavy-handed regulation

¹³ See Reply Comments of DIRECTV, Inc. at 7-10, MB Docket No. 05-192 (filed Oct. 12, 2005) (describing the impact of Comcast-Adelphia-Time Warner Cable transaction on applicants’ ability to acquire new sports rights).

¹⁴ Joe Fling & Saba Hamety, “No Time Warner Cable Means No Dodgers for Fans and Bar Owners,” LA TIMES, Apr. 1, 2014, available at <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-dodgers-tv-sportsnetla-20140401,0,4473477.story#axzz2ygkooEY7>; Michael Lev & Michael Hewitt, “Dodger Fans Can Only Watch Broadcast-Distribution Dispute,” ORANGE COUNTY REGISTER, Apr. 9, 2014, available at <http://www.ocregister.com/articles/dodgers-609202-twc-sportsnet.html>.

¹⁵ Comments of the AllVid Tech Company Alliance *et al.* at 15 *et seq.*, MB Docket No. 14-16 (filed Mar. 21, 2014).

¹⁶ See, e.g., Comments of DIRECTV, LLC, MB Docket No. 10-91 (filed July 13, 2010) (“DIRECTV 2010 AllVid Comments”) (describing concerns with an “AllVid gateway” proposal).

is unnecessary in light of marketplace innovations.¹⁷ If anything, such regulation is even less appropriate today. For example, private industry has worked to develop open home networking outputs based on publicly-available standards, one of which (RVU) is already deployed in the market¹⁸ and another (DLNA CVP-2) is coming soon. Moreover, in a world where, as NCTA puts it, the market for online video “has explosively increased,”¹⁹ just about any kind of content is *already* delivered to practically every device imaginable. Indeed, *MVPDs* do much of the delivery through “TV Everywhere” and similar arrangements.²⁰ The notion that “compatibility” is required for this to happen—much less that the Commission must ensure such compatibility by reengineering every MVPD’s transmission protocol—seems almost quaint in light of these developments.

In any event, as DIRECTV has repeatedly shown, mandating the sort of “standard interface” envisioned by the AllVid Tech Alliance would be especially problematic for satellite operators. DIRECTV, unlike cable operators, places most of its functionality in the set-top box. Among other things, DIRECTV relies on its set-top boxes for the storage of content and data that cable operators can place on the network. DIRECTV has shown in great detail that a “standard interface” for third party devices is incompatible with that system architecture.²¹ At a more

¹⁷ *Id.* at 4-5 (describing marketplace efforts that would allow for the “shopping mall” envisioned by AllVid proponents).

¹⁸ The applications of RVU technology include its use by DIRECTV’s Genie whole-home server, which can provide the DIRECTV service and full HD DVR functionality to RVU-enabled television sets without the use of any set-top box. *See, e.g.*, DIRECTV Help Center, “What is a DIRECTV Ready TV and how does it work?” *available at* https://support.directv.com/app/answers/detail/a_id/3992.

¹⁹ NCTA Comments at 12.

²⁰ Andre Mouton, “Minyanville: Will ‘TV Everywhere’ Apps Push Netflix Out of the Picture,” USA TODAY, Apr. 7, 2014, *available at* <http://www.usatoday.com/story/tech/2014/04/07/cable-companies-react-tonetflix/7420387/>.

²¹ DIRECTV 2010 AllVid Comments at 13-18, 22-24.

fundamental level, proposals for a “standard interface” appear to envision an industry in which MVPDs deliver content and third party device manufacturers use that raw material to innovate. If MVPDs are reduced to mere transmission systems in this way, the Commission will significantly advantage those systems with the greatest capacity and ability to offer a triple-play bundle of services (*i.e.*, cable) while hamstringing those systems that have traditionally relied upon video innovation to compete (*i.e.*, satellite). The Commission should continue to reject the call for such highly intrusive and unnecessary regulation.

Respectfully submitted,

William M. Wiltshire
Michael Nilsson
Anne K. Langer
WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, NW
Washington, DC 20036
(202) 730-1300

Counsel for DIRECTV, LLC

April 21, 2014

/s/
Stacy R. Fuller
Vice President, Regulatory Affairs
DIRECTV, LLC
901 F Street NW, Suite 600
Washington, DC 20004
(202) 383-6300