

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

In the Matter of)	
)	
Video Device Competition)	MB Docket No. 10-91
)	
Implementation of Section 304 of the Telecommunications Act of 1996)	
)	
Commercial Availability of Navigation Devices)	CS Docket No. 97-80
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	PP Docket No. 00-67
)	

**REPLY COMMENTS of
THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
THE INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS
ALLIANCE;
THE WESTERN TELECOMMUNICATIONS ALLIANCE;
and the
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small
Telecommunications Companies (OPASTCO),¹ the National Telecommunications
Cooperative Association (NTCA),² the Independent Telephone and Telecommunications

¹ OPASTCO is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

² NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities; each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended.

Alliance (ITTA),³ the Western Telecommunications Alliance (WTA),⁴ and the Rural Independent Competitive Alliance (RICA)⁵ (collectively, the Associations) hereby submit these reply comments in response to the Commission's Notice of Inquiry⁶ in the above-captioned dockets.

The Associations support this proceeding's goals of spurring innovation and enhancing consumer choice in the video marketplace. Consequently, the Associations concur with the substantial record in this docket demonstrating that standards bodies and the marketplace, rather than government regulations, should determine the successor technology to the CableCARD regime, if indeed any such successor is necessary. The Associations also concur that in the event that any new rules are crafted, they should not burden small or mid-size broadband or video providers.

II. AS INNOVATIVE DEVELOPMENTS TRANSFORM THE LANDSCAPE FOR RETAIL NAVIGATION DEVICES, THE COMMISSION SHOULD DEFER TO STANDARDS BODIES AND THE MARKETPLACE TO DETERMINE THE DEVICES' FEATURES AND FUNCTIONALITY

The NOI observes that Congress enacted Section 629 of the Telecommunications Act of 1996 in order allow consumers to purchase retail set-top devices that would work interchangeably with any multichannel video programming distributor (MVPD).⁷ In

³ ITTA represents mid-size LECs that provide a broad range of high quality wireline and wireless voice, data, Internet, and video telecommunications services to more than 25 million customers in 45 states.

⁴ WTA is a trade association that represents approximately 250 rural telephone companies operating west of the Mississippi River. Most members serve fewer than 3,000 access lines overall, and fewer than 500 access lines per exchange.

⁵ RICA is a national association of nearly 80 competitive local exchange carriers (CLECs) that are affiliated with rural ILECs and provide facilities based service in rural areas.

⁶ *Video Device Competition*, MB Docket No. 10-91, *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67, Notice of Inquiry, 25 FCC Rcd 4275 (2010) (NOI).

⁷ *Id.*, ¶¶4-5.

order to fulfill this requirement, the NOI proposes a new “AllVid” standard, which would replace the unsuccessful CableCARD regime that was originally intended to achieve Section 629’s mandates.⁸ The Commission proceeds from the premises that (1), the CableCARD regime failed because most retail navigation devices provide no more functionality than the navigation device a subscriber can lease from their video service provider, and (2), most retail devices purchased for use with one MVPD cannot be used with a competing MVPD.⁹ The NOI seeks comment on these premises.¹⁰

The relevancy of the Commission’s premises is being undermined even as this proceeding is underway. As commenting parties have shown, advancements in technology are already providing consumers with alternatives to traditional set-top boxes.¹¹ Indications are growing that set-top devices, as originally envisioned, may become obsolete or change beyond recognition in the near future. A recent press report indicates that major MVPDs are planning to provide programming via laptops and iPads, reducing the reliance on set-top boxes.¹² Gaming consoles and Blu-Ray players are already integrating “over-the-top” broadband video functionality.¹³ Google has announced efforts with hardware manufacturers to incorporate “over-the-top” video and traditional Internet browsing functionalities directly into television sets, as well as into

⁸ *Id.*, ¶¶3, 17.

⁹ *Id.*, ¶15.

¹⁰ *Id.*

¹¹ *See, e.g.*, Arris Group, pp. 4-8; Cisco, pp. 10-13; Telecommunications Industry Association (TIA), pp. 3-4; Time Warner Cable, pp. 3-4; Verizon, pp. 5-6.

¹² *See*, Josh Wein, *Cable Operators See IP Video Services Coming to Other Home Devices*, Communications Daily (Aug. 6, 2010), pp. 8-9.

¹³ *See, e.g.*, Nat Worden, *Game Consoles to Challenge Pay TV*, The Wall Street Journal (May 26, 2010), p. B4, http://online.wsj.com/article_email/SB20001424052748704026204575266503977640906-1MyQjAyMTAwMDIwNjEyNDYyWj.html.

disk players and set-top boxes.¹⁴ Reports also indicate that a new Apple TV product will be based on the iPhone, rather than a set-top box.¹⁵

As more devices, including television sets themselves, are increasingly integrating new functionalities that extend beyond providing access to traditional subscription video services, consumers will no longer necessarily be forced to use set-top boxes to access video programming. The use of a set-top box, or its functional equivalent, is fast becoming just one option for consumers as technology and the marketplace continue to evolve at a rapid pace. In other words, the vigorous competition that Congress envisioned when Section 629 was enacted in 1996 is now effectively coming to fruition thanks to innovation and technological advancements, not regulation.

In light of these fast-changing developments, the Associations agree with the substantial number of parties in this proceeding who assert that standards bodies and the marketplace are better suited than regulations to determine the functionality and specifications that should be included in set-top boxes.¹⁶ As several parties have asserted, the marketplace is already meeting consumer demands and Commission goals.¹⁷ Furthermore, a number of standards organizations have demonstrated that their efforts have already begun developing functionalities that are consistent with, or similar to, many of those contained in the AllVid proposal.¹⁸

¹⁴ See, *Announcing Google TV: TV meets web. Web meets TV.* Google corporate blog (May 20, 2010), <http://googleblog.blogspot.com/2010/05/announcing-google-tv-tv-meets-web-web.html>.

¹⁵ See, Joshua Topolsky, *The next Apple TV revealed: cloud storage and iPhone OS on tap... and a \$99 price tag*, Engadget (May 28, 2010), <http://www.engadget.com/2010/05/28/the-next-apple-tv-revealed-cloud-storage-and-iphone-os-on-tap/>.

¹⁶ See, e.g., Arris Group, pp. 4-7; AT&T, pp. 6-12; Alliance for Telecommunications Industry Solutions (ATIS), pp. 4, 6; Cisco, pp. 13-22; TIA, pp. 3-5; Time Warner Cable, pp. 3-5; Verizon, pp. 25.

¹⁷ See, e.g., Multimedia over Coax Alliance (MoCA), p. 4; TIA, pp. 2-5; Verizon, pp. 5-6.

¹⁸ See, e.g., ATIS, pp. 4-7; Digital Living Network Alliance, pp. 4-5; HomePNA, p. 4; MoCA, p. 6.

Finally, there are legitimate concerns that regulations in this area could actually impede innovation, to the detriment of consumers.¹⁹ Technological advancements and consumer expectations are outpacing the regulatory process. Requirements that are imposed with the best of intentions may have the unintended consequence of depriving consumers of an innovative option. In such a situation, manufacturers and/or service providers would have to undergo the onerous and often uncertain process of requesting a waiver. Regulations could also be ambiguous with regard to new innovations, imposing a cloud of uncertainty that would impede the ability of providers to keep pace with changing consumer demands. Therefore, the Commission should defer to standards bodies and the marketplace, which are better suited to determining the specific features and functionality of devices used by consumers to access programming.

III. THE COMMISSION MUST ENSURE THAT ANY NEW REGULATIONS DO NOT DISPROPORTIONATELY BURDEN SMALLER OPERATORS

In the event that the Commission does impose any new regulations as a result of this proceeding, it should heed the American Cable Association's warning that regulatory burdens often disproportionately impact small providers.²⁰ The ACA accurately notes that "[a]dditional regulatory obligations and costs will force operators to divert valuable capital and resources away from the deployment of advanced services, including broadband, in rural and smaller markets."²¹

Of particular concern is the 1394 Trade Association's cavalier request for the Commission to "force" all MVPDs to issue a firmware update.²² This request does not

¹⁹ See, e.g., Arris Group, p. 4; AT&T, pp. 27-32; TIA, pp. 6-8; Verizon, pp. 14-20.

²⁰ American Cable Association (ACA), pp. 2-5.

²¹ *Id.*, p. 4.

²² 1394 Trade Association, p. 1.

attempt to document any benefits that such a requirement would convey to consumers. Furthermore, it fails to quantify the compliance costs that would be imposed on MVPDs, particularly small and mid-size MVPDs, serving rural areas. Any new requirements that may arise from the AllVid proposal must carefully weigh the costs and benefits for consumers of small and mid-size MVPDs that serve in high-cost areas.

IV. CONCLUSION

In order to best spur competition and consumer choice among retail video navigation devices, the Commission should defer to standards bodies and the marketplace to determine the functionality and features these devices should include. Regulations will not be able to keep pace with the advancements in technology that are already providing consumers with alternatives to traditional set-top boxes. However, in the event that any new rules are crafted, the Commission should ensure that small and mid-size broadband or video providers are not disproportionately burdened.

Respectfully submitted,

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