November 5, 2015

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

Re: Notice of Ex Parte Presentation, MB Docket 15-64

On November 3, 2015, the following representatives from across the spectrum of the video content and distribution industry – including content owners, manufacturers, technologists, and small and large multichannel service providers – met with Commission staff[1] to respond to the October 20 *ex parte* submitted by proponents of an "AllVid"[2] government technical mandate:

Content Owners:

- Motion Picture Association of America (MPAA): Neil Fried and Andrea Avila*

Small and Rural Service Provider Associations:

- ITTA – The Voice of Mid-Size Communications Companies: Micah Caldwell
- NTCA – The Rural Broadband Association: Jill Canfield
- American Cable Association: Mary Lovejoy

Manufacturers:

- ARRIS: Jason Friedrich and Bruce McClelland*
- Cisco: Jeff Campbell
- EchoStar: John Card*

National Service Providers and Associations:

- AT&T/DIRECTV: Stacy Fuller, Alex Starr and Steve Dulac*
- Bright House Networks: Jeff Chen
- CenturyLink: Melissa Newman and Joy McConnell-Couch*
- Charter: Alex Hoehn-Saric and Jay Rolls*
- Comcast: Mark Hess, Mark Vickers, Jordan Goldstein, Jonathan Friedman (counsel)
- Cox: Jenny Prime
- DISH Network: Alison Minea
- Time Warner Cable: Cristina Pauzé*
- National Cable & Telecommunications Association (NCTA): Neal Goldberg, Rick Chessen,* Paul Glist (counsel), and Paul Hudson (counsel)
- CableLabs: Ralph Brown and Jud Cary

At the outset of the meeting, the parties praised many aspects of the DSTAC Report, including its detailed cataloguing of the requirements of content providers and the wide diversity in networks, security, and communication technology choices across cable, DBS and IPTV systems. Unfortunately, the AllVid proponents' most recent *ex parte* is even more removed from the lessons learned in DSTAC and reflected in the DSTAC Report than their earlier proposal which was included in the Report.

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[1] The Commission staff present at the meeting were Scott Jordan, Chief Technologist; Alison Neplokh, Deputy Chief Technologist; and William Lake, Michelle Carey, Nancy Murphy, Mary Beth Murphy, John Wong, Brendan Murray, John Kiefer, Lyle Elder, and Antonio Sweet of the Media Bureau.

[2] The parties urging the Commission to mandate specific technical standards have changed their approach (and the names for their proposals) several times. We have used the term AllVid as a short-hand descriptor for all of these varied proposals, which share characteristics of the 2010 AllVid proposal that the Commission declined to pursue, such as compelling MVPDs to devote substantial economic and technical resources to build a new interface that would enable retail device manufacturers to obtain unbundled access to the piece parts of an MVPD's service from which they could create their own service offering without regard for MVPD-content supplier agreements, copyright, licensing and other restrictions, and Title VI requirements.

* indicates participation by telephone

While the recent *ex parte* filed by AllVid proponents purported to provide only clarifying "technical standards and specifications," in fact their new proposal is so changed that it is barely recognizable from their earlier proposal in the DSTAC Report. Their new proposal would:

- rely on nearly an entirely different set of proposed technical standards than their prior proposal;
- mandate a new government-designed intermediary device in the home that MVPDs must provide in order for the consumer to use any new retail device, locking consumers into more (not fewer) boxes with their associated lease payments and higher energy consumption;
- rely on a single, vulnerable security solution that is insufficient for today's consumer offerings; and
- abandon any pretense of enabling service providers to deliver the interactive elements of modern MVPD service to the retail devices they envision.

Moreover, these changes do not address any of the core flaws in their prior proposal. The plan would still:

- ignore the copyright licensing terms used across the MVPD and online video distributor (OVD) ecosystems that power all of the programming and choice in distribution platforms today;
- invite copyright infringement and piracy;
- undermine statutory privacy requirements and evade other consumer protections built into multichannel service;
- deprive U.S. consumers of access to the benefits of the global market movement to apps and HTML5; and
- impose massive costs of invention, development, and implementation for years to come on MVPDs and their customers, whether or not they want this plan.

These burdens would handicap MVPDs, particularly small MVPDs that lack the necessary resources to reconfigure their networks and deploy new adapters required by the new AllVid proposal, but would not apply to OVDs or retail device manufacturers. Although the parties need more time to be able to thoroughly evaluate all of the many changes in this new proposal, a summary of the preliminary critique presented to Commission staff at the meeting is attached hereto.

In DSTAC, the AllVid proponents – who conceded the infeasibility of many of their proposals during DSTAC meetings – brushed off concerns about the gaping holes in their previous proposal, claiming that the gaps would easily be filled with new forthcoming inventions.[3] But their first invention has been to re-invent the proposal itself, with gaps and flaws of its own, which only further reveals that the AllVid concept is not ripe or sufficiently framed to form the basis for any rulemaking proposal. Just as the AllVid proposal that was presented in DSTAC is not a sound basis for a rulemaking proposal,[4] the Commission cannot reasonably base a rulemaking on this new proposal that wasn't even put before DSTAC, wasn't put out for comment in the Media Bureau's Public Notice, hasn't been vetted or corroborated by any experts, and is apparently so poorly understood by its own proponents that they mistakenly characterize its fundamental transformation of their proposal as a clarification.

The ongoing improvisation of the AllVid concept contrast starkly with the unwavering success of the apps approach that is already working in the market using *real* standards and *real*, proven methods,

[3] *See* MB Docket 15-64, NCTA Comments at 22-23 (quoting from DSTAC transcripts).

[4] *See* MB Docket 15-64, Comments filed by MPAA, NCTA, ACA, Comcast, AT&T, and EchoStar (Oct. 8, 2015).

and meeting *real* consumer demand. This apps approach, recently hailed by Apple and Netflix as the future of TV, is based on the applications platforms that CE manufacturers have adopted as a competitive strategy, that consumers have adopted, that MVPDs and OVDs (Netflix, Amazon, Hulu, HBO Now, etc.) support, and that are used by the Smart TVs, tablets, smartphones, and consumer-owned streaming set-top boxes like Roku. There have been over 56 million MVPD app downloads to iOS and Android devices alone, and MVPD apps are now available to more than 460 million devices – more than twice the number of set-top boxes currently in use. MVPDs are expanding the apps-based approach to even more devices and more platforms by using new HTML5 web streaming media standards developed by the World Wide Web Consortium and delivering apps through home networking solutions developed by major CE and chip manufacturers and MVPDs through multi-industry consortia like the Digital Living Network Alliance (DLNA) and the RVU Alliance.

Just weeks ago, all of the DSTAC members reported their consensus view that "[i]t should not be necessary to disturb the potentially multiple present and future security and other network technology choices made by cable, DBS and IPTV systems" and that "[i]t is not reasonable to expect that all operators will re-architect their networks in order to converge on a common solution."[5] But the new AllVid proposal reverts back to a one-size-fits-all solution that ignores the substantial technical distinctions among MVPDs that are documented in the DSTAC Report, such as the necessity for more than a one-way flow of data to effectuate satellite entitlements.

The parties cautioned the Commission against imposition of technology mandates on an industry that is much more dynamic and complicated than cable was in 1998 when the CableCARD mandate was adopted. Such mandates have time and again proven costly to innovation and consumers; required significant FCC involvement (with numerous orders and regulations), and substantial money and time; and, in the end, provided consumers with little to no benefit and have been rapidly overtaken by marketplace developments.

Finally, the parties urged the Commission to grant NCTA's request for an extension of the reply comment deadline in order to afford a more reasonable amount of time for thorough evaluation of the new AllVid proposal and its relationship to the DSTAC Report in reply comments. The Bureau subsequently denied that request.

Respectfully submitted,

Motion Picture Association of America (MPAA)
National Cable & Telecommunications Association (NCTA)
ITTA – The Voice of Mid-Size Communications Companies
NTCA – The Rural Broadband Association
American Cable Association (ACA)
ARRIS Group, Inc.
AT&T/DIRECTV
Bright House Networks, LLC

Cable Television Laboratories, Inc. (CableLabs)
CenturyTel Broadband Services, LLC d/b/a CenturyLink
Charter Communications, Inc.
Cisco Systems, Inc.
Comcast Cable Communications, LLC
Cox Communications, Inc.
DISH Network LLC
EchoStar Technologies, L.L.C.
Time Warner Cable Inc.

[5] DSTAC Report, Summary at 2-3.

Review of October 20 AllVid *Ex Parte* Proposal

1. **New proposal, more harms.** The October 20, 2015 ex parte notification submitted by Google, Amazon, Hauppauge and Public Knowledge appears to have the same goal as their earlier proposals in DSTAC , but it is a completely different proposal than what they submitted in DSTAC and was included in the DSTAC Report – with new specs, new protocols, and even more new to-be-invented parts. In DSTAC, they suggested 38 protocols (existing or to be invented). Their new proposal dropped 31 of those, kept 7 (mostly minor), and offered 10 new ones, for a new set of 17 suggested protocols. Although a smaller list, the protocols in the new proposal would not be any easier to invent, develop or implement. The new proposal is not even more viable than the original proposal, and it would cause even more serious harms to consumers and to MVPDs.

2. **The new approach would require MVPDs to provide new AllVid servers in the home, costing consumers extra money and using more energy.** Since the new proposal can't work from the cloud, its new protocols would require MVPDs to provide a government-designed intermediary box in order to make any new retail device work, locking consumers into boxes and associated payments, and higher energy consumption when consumers want boxless, wireless solutions that can run apps on customers' own devices.

3. **The new approach would weaken security.** This new proposal relies exclusively on a limited "link protection" security. Reliance on one form of security is not sufficient to protect content. Rather, a layered approach is the best practice, as the MPAA explained during the DSTAC meetings and as set forth in the MovieLabs specifications for Next Generation Video and Enhanced Content Protection described in the DSTAC Report. A single-layer approach does not support today's modern consumer offerings like electronic sell through of movies. The proposal also eliminates the content protection tools that do enable these features in a competitive market, and removes their prior proposal to include some to-be-invented security certification and authentication tools to ensure that devices are authorized to access MVPD service. MVPDs – but not OVDs – would lose the tools that support today's consumer offerings, and lose the ability to compete for high value content and make new offerings to their subscribers. MVPDs would also become vulnerable to hackers because the implementation of the proposal would result in a single point of attack.

4. **The new approach would disable MVPDs from providing the service consumers buy.** The new proposal from the AllVid proponents would eliminate any means for an MVPD to deliver the service its customer has paid for and expects to receive, the way an OVD can on a tablet, smartphone, or streaming box. The proposal made in DSTAC by the AllVid proponents called for to-be-invented "widgets" that would allow the MVPD to recreate all the interactive portions of its service, such as sports highlights and scores, interactive advertising, news tickers, weather, and integrated social media, subscriber-initiated on-screen upgrades and downgrades, and orders for technical assistance. Now, that is gone. Consumers would lose all the interactive enhancements of modern MVPD service for which they have paid. The new proposal also makes "optional" (i.e., removes) device diagnostics that can be used to resolve consumer complaints. Like the prior proposal, the new approach also would disable basic features like EAS and VOD purchases and reporting (but in new ways, such as not requiring devices to render EAS, and providing no enforceable or auditable way to handle VOD purchases). Like their prior proposal, it also ignores must carry and channel positioning, privacy protections for consumers' viewing records, and the copyright licensing used across the MVPD and OVD ecosystem that is powering all the programming and choice in distribution platforms today.

5. **The new approach would appropriate guide data that MVPDs do not own**. The new AllVid proposal would require that MVPDs provide guide data that is not used with CableCARDs, not owned by MVPDs, and is to be implemented in an entirely new and unproven way that is very different from what the AllVid proponents proposed in DSTAC. This proposal is calling for new inventions and for MVPDs to disregard their contracts and licenses and infringe intellectual property and copyright.

6. **The new approach would interfere with the IP migration.** The new proposal removes the cloud as an option for delivery of MVPD service to retail devices and would require MVPDs to invest in new in-home servers designed around the MVPDs' current networks. MVPDs' resulting capital investments in new AllVid devices (that were called "AllVid Adapters" in the 2010 AllVid proposal) that receive legacy digital service would create an expensive legacy that would slow network innovations and migration to IP and require expensive device replacement for the networks to recover bandwidth currently used for legacy digital service.

7. **The new approach would deprive U.S. consumers of access to the benefits of the global market movement to apps and HTML5.** The new AllVid approach would isolate MVPDs from the apps and HTML5 environment that has been adopted by worldwide TV standards groups, Smart TVs and other CE devices as a platform for TV applications. This environment enables MVPDs to adopt and deploy rapid, agile development using the same development tools, same pool of developers, same content protection techniques and same IP technologies as OVDs. Compared to the isolated development environments that preceded the apps revolution – and compared to an isolated AllVid environment – MVPD cloud/app/HTML tools and development teams are orders of magnitude faster, cheaper, and more innovative in upgrading service and expanding reach to more devices. AllVid would create a unique island-America environment that would isolate and slow innovation by U.S. MVPDs – but not OVDs. Even if U.S. MVPDs are not prohibited from continuing to deploy and support apps, the hours, dollars and other resources invested in AllVid would have been diverted from the development and enhancement of services and applications designed to keep up with fierce video competition that redounds to the benefit of consumers.

8. The new approach would require years of new development work at consumer cost—when the market is moving much faster. Contrary to the claims by its proponents, the new proposal does not involve "off-the-shelf" technology in "common use" today. Rather, it would require years of development work on new government-designed protocols, standards and devices that have not yet been invented or implemented, as well as massive re-architecting of MVPDs' networks. MVPD customers would be left footing the bill for years of development work and diverted resources – when pay-TV apps are already delivering service to millions of consumer-owned devices. And by then, video technology, the video market, and consumer tastes will have changed so much that an AllVid box will be an exorbitant irrelevance.