

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

In the Matter of)	
)	
Basic Service Tier Encryption)	MB Docket No. 11-169
)	
Compatibility Between Cable Systems and)	PP Docket No. 00-67
Consumer Electronics Equipment)	

**REPLY COMMENTS OF THE
ALLVID TECH COMPANY ALLIANCE**

December 12, 2011

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The AllVid Tech Company Alliance respectfully submits these Reply Comments urging the Commission to take a holistic and coordinated approach toward achieving interoperability and efficiency in the provision of MVPD services to consumers. Cable industry multiple system operators (“MSOs”) have requested an FCC rule change to allow comprehensive encryption of their transmissions, citing the need for MSOs to control access to signals remotely and electronically, to reduce costs and increase efficiency.¹ Others have said that the Commission should not take this step unless it contemporaneously addresses electronic barriers to consumer access to signals that can

¹ *In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of NCTA at 5-8 (Nov. 28, 2011); *In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of Comcast Corp. at 1-13 (Nov. 28, 2011) (“Comcast Comments”); *In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of Cablevision Systems Corp. at 1-3, 7-13 (Nov. 28, 2011).

now be removed by more efficient, IP-based, digital techniques.² The Alliance joins these commenters who have urged the FCC not to act piecemeal and not to regulate by waiver.

The transition to IP-based digital techniques is an opportunity that if not grasped now will become an obstacle. It is time to address the persistent and unresolved barriers to competition and to MSO system interoperability with home network devices. The Commission should act on this rulemaking only in this larger context. As the CEA and PK-MAP comments argue and demonstrate, the only technical avenue to accomplish this is an AllVid rulemaking.

I. The Alliance Agrees That A Comprehensive Approach To Interoperability Is Necessary And Should Begin Now.

As put by Montgomery County, Maryland, the FCC’s obligation “is to relieve the problem, not intensify it.”³ The digital toolkit that cable MSOs would now have the Commission employ for their own benefit is the same toolkit that can relieve existing barriers to device competition and interoperability. Thus the Alliance agrees with CEA,⁴ Montgomery County⁵ and with PK-MAP⁶ that any action by the Commission to

² *In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of Montgomery County, Maryland at 4-7 (Nov. 28, 2011) (“Montgomery County Comments”); *In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of Public Knowledge and Media Access Project at 6, 11-14 (Nov. 28, 2011) (“PK-MAP Comments”); *In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of the Consumer Electronics Association (Nov. 28, 2011) (“CEA Comments”).

³ Montgomery County Comments at 8.

⁴ CEA Comments at 3.

⁵ Montgomery County Comments at 7.

accommodate new and improved digital techniques should have corresponding benefits for consumers, by finally resolving the persistent electronic barriers to competition and interoperability. As CEA and PK-MAP point out, the only available and the most efficient solution is to proceed forthwith with the AllVid Rulemaking.⁷

The issues that the Commission has failed to resolve have arisen from the same transition to digital techniques that has occasioned this rulemaking. Thus the Commission, if it proceeds to an order *only* with this NPRM, would be in the position of recognizing and addressing issues that may impede efficient MSO service delivery, but overlooking MSOs' failed implementations of its rules.⁸ This approach cannot and should not endure.

II. The Efficiency Considerations Cited In Support of Basic Tier Encryption Should Also Compel The FCC To Establish An IP-Based Standard Interface For Interoperability.

Regulation by waiver means that efficiency will be recognized only when it suits the regulated industry to do so. Comcast and Time Warner, which for years adamantly resisted the notion of consumer self-installation of CableCARDS that were designed explicitly for this purpose, now tout self-installation of DTAs as more efficient, preferred by their customers, and environmentally friendly.⁹ Yet, the major MSOs oppose efficiency

⁶ PK-MAP Comments at 6, 11-13.

⁷ CEA Comments at 11-12, PK-MAP Comments at 11-13.

⁸ CEA's Comments document many instances in which time-limited waivers have been sought and granted on the basis of "solutions" that either have not been judged compliant with rules, or have not materialized at all. CEA also notes that where waivers have not been sought at all or have expired, enforcement action has not been taken, apparently because the FCC has no clear policy to enforce. CEA Comments at nn. 9-10, 12.

⁹ Comcast Comments at 5; *In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of TWC at 4 (Nov. 28, 2011).

driven by competition, which would result from the elimination of set-top boxes through navigation device standards, and interoperable home networking.

Comcast's comments declare that with the transition to digital techniques, the objective sought by the Congress in Section 624A (defined by Comcast as limited to analog channel interoperability) has been achieved.¹⁰ This facile formulation ignores not only the absence of competition in *navigation devices* (an explicit mandate in Section 624A as well as in Section 629), but also the lack of interoperability with home networks.

As CEA notes, the Commission missed the opportunity to take a step in this direction in the October 2010 CableCARD Order. In that Order, the FCC granted a waiver from "common reliance" to allow Cable MSOs to field less complicated set-top devices ("HD DTAs") to homes to which analog service was being phased out. MSOs, citing only "cost," asked that these devices be exempted from the requirement under Section 76.640 to furnish an Ethernet port that would be interoperable for purposes of home networking. CEA opposed this request on the basis that the benefits of such a port to consumers and to device competition would far outweigh its purported cost. The FCC, assuming that CableCARD-reliant devices would be only an "interim" step toward a possible AllVid environment,¹¹ granted the waiver, thus further isolating consumers and competitive devices from interoperability with MSO services and programming. The FCC should not compound this mistake by continuing to act piecemeal as it chases partial gains in "efficiency" but loses sight of the bigger picture.

¹⁰ Comcast Comments at 2, 14-15.

¹¹ *In the Matter of 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 Proposed Rulemaking (rel. Apr. 21, 2010).

III. The Alliance Agrees With CEA That The Suite Of Standards As Proposed For Reference In An AllVid Rulemaking Should Also Comprise The Standard Interface Required By Section 76.640.

The Commission, reacting to a number of waiver requests, did require that by December 1, 2012, cable MSOs must support “a” standard for IP-based, interoperable home networking from interactive MVPD-provided devices.¹² With no such standard then available for reference, and clearly anticipating an AllVid rulemaking, the Commission did not also require MSOs all to use *the same standard or interoperable standards*, so as to make this interface of tangible value to consumers. CEA’s comments recount that similar failures with respect to IPTV providers and “downloadable” security have led to market failure for potential entrants and regulatory uncertainty.

The Commission is now in a much stronger position to proceed and – a year closer to the deadline, with no progress of record – the urgency is much greater. The suite of IP-based interface standards that the Alliance proposed to the Commission on September 20, 2011, provides the necessary tools and references for a national standard and interoperable interface, based entirely on existing private sector standards.

In the October 2010 CableCARD Order, the Commission concluded that it was “important to identify a baseline of functionality ... that consumers who network their devices and device manufacturers can rely on.”¹³ The Commission also described a set of features that are necessary to “provide a foundation for a retail market,” including delivery

¹² *In the Matter of 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, Third Report and Order and Order on Reconsideration (“CableCARD Order”), Appendix (Oct. 14, 2010).

¹³ CableCARD Order at 44.

of compressed, recordable content, standardized closed caption delivery, and service discovery.¹⁴

At the time, the Commission noted that “considerable work [is] ongoing in industry standard bodies to provide these functionalities,” and said it would allow time for this technical work to proceed. Thus it declined to identify specific means by which the functionality must be provided.¹⁵ Since then, the technical work has progressed in documents developed by the Digital Living Network Alliance (“DLNA”) and others. It is now the optimal and essential time for the Commission to recognize the opportunity presented by this progress.

The baseline functionality requirements identified by the Commission in the CableCARD Order are identical to the home networking requirements contemplated in the AllVid NOI – the delivery of recordable compressed programming, together with associated data (*e.g.*, closed captions) and the protocols for discovery of services or programming and the navigation thereto via IP networking technologies. In the AllVid context, the Alliance described specific technology, suitable for adoption in the rules, in its September 20, 2011, filing, which included an entire draft regulation on which public comment should be sought.¹⁶ It is time to seek such comment.

For “a” standard to be useful to consumers and to support device competition, it must provide a baseline of functionality to rely upon – a single set of interoperable

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *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, Ltr. from Robert S. Schwartz, AllVid Tech Company Alliance to Marlene H. Dortch, Sec., FCC (Sept. 20, 2011).

standards. In the context of an IP-based port as required by Section 76.640, there are no essential differences between the baseline functionalities described in the CableCARD Order and those described in the AllVid NOI. As a result, both the IP-port requirements and the AllVid networking requirements should be identical, and should be adopted together.

Accordingly, the Alliance endorses CEA's proposal that the Commission seek public comment on (1) whether the suite of standards proposed by the Alliance, or a subset thereof, should be identified by the FCC as the default implementation of each MSO's obligation under Section 76.640 to provide "a" standard interface, and (2) whether this implementation should be required by December 1, 2012.

IV. An AllVid Rulemaking Should Proceed In Parallel With The Identification Of A Standard IP-Based Interface Under Section 76.640.

As CEA documented in its Comments, the Commission's failure to proceed with an AllVid rulemaking has left waiver applicants, as well as MVPD subscribers, in uncertainty about the legal and competitive status of systems employing non-QAM, non-CableCARD techniques. The FCC has aggravated this problem by (1) exempting non-interactive set-top boxes from its home network interoperability requirement in Section 76.640, and (2) failing to clarify that MSOs, in implementing "a" standard interface by December 1, 2012, should employ a standard that is *actually designed to be nationally interoperable with consumers' home networks*.

The Alliance agrees with CEA, PK and MAP that the FCC has a choice between inaction, which will thwart competition and compound uncertainty, and an AllVid rulemaking. Given the pending obligation on cable MSOs to identify and employ an IP-

based standard for home networking, it would seem both sensible and urgent to proceed with the AllVid rulemaking now. The object in each case is to identify a suite of readily accessible standards that will comprise an IP-based interface to support both navigation and home network products. It would be fair neither to the public nor to MVPDs to consider one in isolation from the other, or to view one as a substitute for the other.

While nationally interoperable home networking has been identified as a requirement under Section 629,¹⁷ it is not and cannot be a substitute for the core requirement that the FCC, in its rules, *assure* a national, competitive market in *navigation devices*. Press reports that secondary and mobile devices will receive less than 10 percent of an MVPD’s streamed channels¹⁸ do not illustrate that compliance with the Congress’s mandate is at hand, or that it can be in the absence of an AllVid rulemaking. As the Commission said in its Plug And Play Order, “The mandate of Section 629 is broad. ... [I]t requires the Commission to assure the commercial availability of navigation devices – meaning that the Commission *must persist in its efforts until commercial availability is achieved*.”¹⁹

The Commission must recognize that it can no longer deal piecemeal or neglect to deal at all with the challenges and opportunities that IP-based digital techniques pose for signal delivery and home networking. As the launch of this NPRM and all of the

¹⁷ See In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices, CS Docket No. 97-80, Further Notice of Proposed Rulemaking and Declaratory Ruling, 15 FCC Rcd 18199 at ¶ 28 (rel. Sept. 15, 2000); Second Report and Order and Further Notice of Proposed Rulemaking ¶¶ 45 – 61 (rel. Oct. 9, 2003) (“Plug And Play Order”).

¹⁸ See, e.g., reports of streaming service for approximately “3 dozen channels” – http://www.fiercetelecom.com/press_releases/live-verizon-fios-tv-coming-soon-xbox-complete-kinect-voice-and-gesture-con; <http://www.lostremote.com/2011/12/05/cox-debuts-ipad-app-with-live-streaming-for-cable-customers/>.

¹⁹ Plug And Play Order at ¶ 46 (emphasis supplied).

comments urging efficiency in the transition to digital techniques illustrate, it is time for a unified, coordinated approach by the Commission.

Respectfully submitted,

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