

Before the
Federal Communications Commission
Washington, D.C.

In the matter of

The Downloadable Security Technical
Advisory Committee (DSTAC) Report

MB Docket No. 15-64

**COMMENTS OF THE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)¹**

CCIA respectfully responds to the Federal Communications Commission's ("Commission") request for public comments on how the Downloadable Security Technical Advisory Committee's (DSTAC) final report, submitted to the Commission on August 28, 2015, "should inform the Commission's obligations under Section 629 of the Communications Act."²

CCIA has long advocated for more competition in the set-top box and video navigation device markets. As a member of the Consumer Video Choice Coalition (CVCC), CCIA has joined with leading technology companies, consumer advocacy groups, and innovative video device manufacturers to stress the importance of a vibrant, competitive market for set-top boxes and video navigation devices. With its colleagues in the CVCC, CCIA believes that consumers would benefit from greater competition in the set-top box marketplace, which has been severely lacking and not achieved the goals of the Telecommunications Act of 1996 ("the 1996 Act").³

¹ CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA's members employ more than 600,000 people and generate annual revenues in excess of \$465 billion. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries. A list of CCIA's members is available online at <http://www.cciagnet.org/members>.

² *Media Bureau Seeks Comment on DSTAC Report*, MB Docket No. 15-64, Public Notice, DA 15-982 (rel. Aug. 31, 2015).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.) (2012).

As consumers rapidly adopt new ways of viewing content, they should not be locked into having only one way of accessing video from their cable provider. Following the DSTAC’s hard work and reasoned recommendations, the Commission should act quickly to conduct a rulemaking proceeding to establish regulations assuring a competitive environment that will unleash innovation in the set-top box market that will benefit consumers and our economy.

I. The Current Market for Set-Top Boxes Lacks the Competition Envisaged by the 1996 Act.

Congress provided a clear mandate to the Commission when it enacted Section 629 of the 1996 Act: “The Commission shall . . . adopt regulations to assure the commercial availability . . . of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming . . . from manufacturers, retailers, and other vendors”⁴ Indeed, this law passed with the belief that “[c]ompetition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality.”⁵ However, in the nearly twenty years since, the Commission’s efforts to facilitate more retail competition for set-top boxes have been largely unsuccessful.⁶ In its most recent Commission-mandated filing regarding the status of CableCARD deployment and support, the National Cable & Telecommunications Association (NCTA) noted that since 2007, the nine largest cable operators have deployed about 617,000 CableCARDs for use in retail devices.⁷ However, they have deployed over 53,000,000 CableCARDs in devices that they

⁴ 47 U.S.C. § 549(a) (2012).

⁵ H.R. Rep. No. 104-204, at 112 (1995).

⁶ John Bergmayer, *Creating Consumer Choice in Set-Top Boxes*, PUBLIC KNOWLEDGE (Aug. 31, 2015), <https://www.publicknowledge.org/news-blog/blogs/creating-consumer-choice-in-set-top-boxes> (explaining CableCARD’s “technical and logistical problems”).

⁷ Letter from Neal M. Goldberg, Vice President and Gen. Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Fed. Comm’n Sec’y, CS Docket No. 97-80 (July 31, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001119614>.

supplied to their customers.⁸ By those numbers alone, it is clear that the set-top box marketplace is still characterized by the incumbent interests' firm control over how consumers can view content.⁹

The incumbents' control over set-top boxes has yielded massive profits at the expense of consumer choice and consumer's pocketbooks. Recently, a survey of major MVPDs conducted by Senators Ed Markey and Richard Blumenthal found that "approximately 99 percent of customers rent set-top boxes directly from their MVPD. . . . The average household spends \$231.82 a year on set-top box rental fees."¹⁰ Moreover, "the average yearly fee for a single set-top box was multiplied by the total number of set-top boxes leased from MVPDs to determine that the industry generates \$19.5 billion in revenue."¹¹

Because ninety-nine percent of consumers have been locked into leasing the set-top box of their provider's choosing, the retail set-top box market has lacked the maturity or vibrancy that has been the hallmark of other consumer electronics markets. According to the Commission's National Broadband Plan, there has been a lack of competition and new entrants into this marketplace because "[r]etail set-top boxes have been competing on an uneven playing field."¹² MVPDs lock their customers into lease agreements, potential entrants face high costs and high barriers to entry, and even though some companies have successfully introduced

⁸ *Id.*

⁹ See Jeff Baumgartner, *FCC Group Presents Multiple Non-CableCARD Paths*, MULTICHANNEL NEWS (Aug. 28, 2015, 1:23 PM), <http://www.multichannel.com/news/next-tv/fcc-group-presents-multiple-non-cablecard-paths/393305#sthash.6xnK8qBH.dpuf> ("The CableCARD regime has failed miserably with respect to sparking a robust market for cable-ready retail devices.")

¹⁰ Press Release, Office of Sen. Ed Markey, Markey, Blumenthal Decry Lack of Choice, Competition in Pay-TV Video Box Marketplace (July 30, 2015), *available at* <http://www.markey.senate.gov/news/press-releases/markey-blumenthal-decry-lack-of-choice-competition-in-pay-tv-video-box-marketplace>.

¹¹ *Id.*

¹² Fed. Comm'n's Comm'n, *Connecting America: the National Broadband Plan 51* (2010), *available at* <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

devices that connect Internet video to the TV, these devices generally cannot access linear video and other traditional TV content.¹³

Although Congress specifically empowered the Commission “to assure the commercial availability . . . of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming . . . from manufacturers, retailers, and other vendors,” ninety-nine percent of consumers are subjected to their providers’ monopoly power.

II. The DSTAC Report Serves as a Catalyst for Commission Action.

Recognizing the poor development of the navigation device market and the inability to achieve Section 629’s goals, Congress included a provision into the STELA Reauthorization (STELAR) Act of 2014 calling on the Commission’s Chairman to convene a working group of experts and stakeholders from a wide range of perspectives “to identify, report, and recommend performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform, and technology- and platform-neutral software-based downloadable security system designed to promote the competitive availability of navigation devices in furtherance of Section 629 of the Communications Act.”¹⁴ The DSTAC convened earlier this year, and, after extensive study and presentations, submitted its report and recommendations to the Commission on August 28th. The two major proposals were the “Competitive Navigation” proposal supported by the CVCC, which would facilitate retail competition by promoting custom features and user interfaces in third party set-top boxes, and the other proposal, the “MVPD Application-based proposal,” which would only allow MVPD-provided apps on third-party devices.

¹³ *Id.*

¹⁴ Pub. L. No. 113-200, § 106(d), 128 Stat. 2059, 2063 (2014).

The Commission now has a unique opportunity to take the work produced by the DSTAC, create a new framework for video, and finally “assure the commercial availability . . . of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming . . . from manufacturers, retailers, and other vendors”¹⁵

III. The Commission Should Foster a Competitive Marketplace for Set-Top Boxes and Other Video Navigation Devices.

Building on the DSTAC Report, the Commission should not delay in undertaking a rulemaking proceeding based on the Competitive Navigation proposal to encourage competition and innovation in the set-top box marketplace. Consumers will benefit from the innovation that will occur if the Commission pursues a course that encourages competition and lowers barriers to entry. For example, consumers would benefit from user interface differentiation. Because of competition among many smartphone makers and Internet browsers, consumers have seized the opportunity to choose which products and services they like, which encourages innovation.¹⁶ Typically, when a consumer signs up with a cable provider, he/she is informed of just one option for a set-top box – the one the provider leases. When ninety-nine percent of consumers are locked into leasing their cable providers’ set-top boxes, those providers have little incentive to innovate, differentiate, or even update their products. The MVPD Application-based proposal does nothing to address this competitive issue and only perpetuates it by extending the MVPDs’ control over consumption of pay TV content beyond their own set-top boxes.

¹⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, § 629, 110 Stat. 56 (codified at 47 U.S.C. § 549(a) (2012)).

¹⁶ See Comments of the Consumer Video Choice Coalition, MB Docket 15-158, at 5 (filed Aug. 21, 2015) (“[F]eatures such as a search bar and tabbed browsing were first introduced by Firefox before being incorporated into [Internet Explorer].”).

Not only should the Commission observe the findings and Competitive Navigation recommendations in the DSTAC Report, the Commission should also rely upon its experience in previous attempts to ensure a competitive set-top box marketplace. Referring to lessons learned from CableCARD, former FCC Commissioner Meredith Baker stated:

First, our technological mandates come with significant costs. By one estimate, the cost of CableCARD compliance for the cable industry alone – costs passed on to cable consumers – has totaled nearly one billion dollars. Second, we should be careful not to mandate particular technological solutions that would freeze into place the current state of technology.¹⁷

Applying this to the DSTAC’s recommendations, the Commission should adopt an approach that allows technology to evolve and meet consumer demands. Like mobile phones and Internet browsing, customers should be empowered to choose which features, user interfaces, and third party set-top boxes they want as opposed to those forced on them by their cable providers. The Commission should pursue policies that ensure that device manufacturers can innovate and differentiate retail products from MVPDs’ leased products.

IV. Conclusion.

The set-top box marketplace has seen limited innovation and persistent incumbent control since Congress mandated that the Commission “assure the commercial availability . . . of converter boxes, interactive communications equipment, and other equipment” in the Telecommunications Act. The DSTAC worked very hard to analyze the marketplace and recommended a Competitive Navigation proposal that would finally free consumers from being locked into having only one way of accessing video from their MVPD provider. The Commission should commence a rulemaking based on the Competitive Navigation proposal and

¹⁷ *In re* Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, *Notice of Inquiry*, 25 F.C.C.R. 4275, 4301 (Apr. 21, 2010) (statement of Comm’r Baker) (citation omitted).

embrace this opportunity to finally achieve its statutory mandate and foster real competition in the retail market for consumer navigation devices.

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Respectfully submitted,

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