

November 3, 2008

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: In the Matter of Implementation of Section 304 of the
Telecommunications Act of 1996, Commercial Availability of Navigation
Devices, Compatibility Between Cable Systems and Consumer Electronics
Equipment, CS Docket No. 97-80, PP Docket No. 00-67

Dear Ms. Dortch:

The undersigned public interest organizations are writing in support of Verizon Communications' recent filing¹ expressing concern with the cable industry's plan to use the successor to CableCARD to limit competition and reduce choice in the consumer electronics marketplace. We also reiterate our objection to a standard that stifles third party innovation in the consumer video market, and our support for a unified, open standard.² A restrictive standard would be contrary to both the spirit and letter of Section 629 of the Telecommunications Act of 1996.³

As the Commission is aware, several cable television providers and consumer electronics manufacturers have entered into a memorandum of understanding ("MOU") to integrate tru2way technology into future consumer electronics products.⁴ We are concerned that tru2way technology will restrict third party developments and place the cable industry controlled CableLabs further into the role of gatekeeper of innovation. The recent filing by Verizon Communications⁵ concerning the lack of interoperability between tru2way and non-cable MVPDs clearly illustrates the pitfalls created by this closed platform.

¹ Ex Parte Letter of Dee May to Marlene Dortch, CS Docket No. 97-80 (July 31, 2008).

² These objections were detailed in two prior filings: Ex Parte Letter of Public Knowledge, *et al.*, CS Docket No. 97-80 (June 11, 2007), and Comments of Public Knowledge, *et al.*, CS Docket No. 97-80 (August 24, 2007).

³ "The Commission shall ... adopt regulations to assure the commercial availability to consumers ... of converter boxes, interactive communications equipment, and other equipment used by consumers to access ... video programming and other services offered over ... video programming systems, from manufacturers, retailers, and other vendors not affiliated with any ... video programming distributor." 47 USC § 549.

⁴ See Comcast Submission of Memorandum of Understanding, CS Docket No. 97-80; PP Docket No. 00-67 (June 10, 2008).

⁵ Ex Parte Letter of Dee May to Marlene Dortch, CS Docket No. 97-80 (July 31, 2008).

Tru2way Limits Competition

The integration of tru2way technology into televisions limits competition in the consumer electronics market. Tru2way is a cable-only solution. Instead of adopting an open, universal standard capable of supporting any number of innovative technologies and content delivery systems, tru2way presents consumer electronics manufacturers with an unproductive choice. Manufacturers could install a tru2way as well as an “everything else” input which supports non-cable MVPDs, forcing consumers to pay for an input that they will not use. Alternatively, manufacturers could simply decide not to support all MVPDs and choose between installing a tru2way or an “everything else” input.

This results in consumers being put in a similarly untenable situation and placing different MVPDs on uneven competitive footing. When purchasers of these products are faced with the choice between using the integrated technology and a set-top box they must purchase and use separately, they are likely to avoid new products that do not use the standard integrated into their device, thus stifling innovation and reducing the possibility of competition.

This result is in direct conflict with the Commission's “overarching goal . . . to assure competition in the availability of set-top boxes and other consumer premises equipment.”⁶ After purchasing a device that only supports a subset of MVPDs, consumers would then be effectively locked into that choice, facing an artificially high switching cost. Additionally, with no guarantee of future computability, consumers with the closed tru2way standard may find themselves stuck with a valueless feature. A single, integrated solution would allow new technologies to approach consumers on a level playing field and prevent them from being frozen out by incumbents.

This limitation on competition was highlighted in Verizon's recent *ex parte* letter to the Commission on this topic.⁷ Verizon expressed support for an all-provider technology- and platform-agnostic standard. At the same time, it expressed concern that tru2way would not work on non-cable video provider networks, including its own FiOS fiber optic offering. Instead of a proprietary, cable-centric approach, Verizon suggested the adoption of a “low-cost, widely adopted, and universally implementable interface.”⁸ This type of interface would minimize barriers to entry, thereby reducing incumbent advantage and increasing the ability of new technologies to compete in the marketplace. It would likewise give consumers the ability to purchase a single device and still retain the ability to select the MVPD of their choice, as well as to change that decision later.

Tru2way Limits Innovation

Under the terms of the MOU, cable television providers have successfully forced consumer electronics manufacturers to hand over the controls of innovation to them.

⁶ Notice of Apparent Liability for Forfeiture and Order, File Number EB-07-SE-352 (October 15, 2008).

⁷ Ex Parte Letter of Dee May to Marlene Dortch, CS Docket No. 97-80 (July 31, 2008).

⁸ See *id* at 2.

Innovators do not have a fair opportunity to integrate their technologies into the tru2way standard. The MOU does contain an advisory board nominally tasked with introducing innovation into tru2way, but it lacks the ability to implement change. The voting structure guarantees cable television companies a majority of the votes.⁹ Furthermore, any decision by the board is merely “advisory” and without power to influence the tru2way standard.¹⁰

As a result of the MOU and the tru2way standard, consumers will not have the ability to easily opt-out of the tru2way regime and innovators will not have a market for their technologies. Innovators will be unable to differentiate themselves in the marketplace by easily integrating new services with a customer's existing programming, and the goal of a viable market for third party video hardware embodied in Section 629 of the Telecommunications Act of 1996 will go unrealized.

Conclusions

As innovations come to the consumer electronic and video delivery markets, it is critical to create a space for fair competition. Today's powerful incumbents should not be able to protect their market position by freezing new technologies and competitors out of the market. Incumbents should also be prevented from using their market power to prevent consumer electronics manufacturers from supporting competing services. Instead, these incumbents should compete on a level playing field against a constant stream of innovating challengers. Again, we ask the Commission to enforce 47 USC § 549 by ensuring that consumers have access to video programming through the use of third-party hardware without being forced to adopt the restrictive licensing terms and anti-competitive cable-centric design of the tru2way standard.

Sincerely,

Public Knowledge
Free Press
Media Access Project
New America Foundation
U.S. Public Interest Research Group

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate

⁹ See Comcast Submission of Memorandum of Understanding, CS Docket No. 97-80; PP Docket No. 00-67 (June 10, 2008) at paragraph 13.

¹⁰ See *id.*

Commissioner Robert M. McDowell
Amy Bender
Amy Blankenship
Rudy Brioche'
Rick Chessen
Cristina Chou Pauze'
Monica Desai