

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: *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.

Fourteen years ago, Congress directed the Commission to adopt regulations to “assure the commercial availability” to multichannel video consumers of “navigation devices” – a term that includes set-top boxes, “interactive communications equipment,” and other types of devices that subscribers use to access video programming and other services offered over the multichannel provider’s transmission system. In plain English, when Congress included Section 629 in the Telecommunications Act of 1996, it sought to create a competitive market for navigation devices that would give consumers the option of going to their electronics retailer to choose a set-top box or similar devices that offer the features they want, rather than having to use the boxes supplied by their cable operator or other multichannel video programming distributor (“MVPD”). The Commission responded by crafting rules that required cable operators to separate the security and conditional access functions of their service from the actual delivery of video and other programming. This “integration ban” is embodied in the Commission’s existing CableCARD rules.

To be blunt, the CableCARD approach to implementing Section 629 has been disappointing. Although the Commission has made some progress in trying to bring Congress’ vision to reality, the fact remains that a very large majority of consumers continue to rely on equipment supplied by their pay TV providers. It is another example of an unintended consequence of regulation. I support the two initiatives before us now – a Further Notice of Proposed Rulemaking (“FNPRM”) to examine the CableCARD rules and a new Notice of Inquiry (“NOI”) to explore possible alternatives to our current approach. Each asks a number of good questions about what has, or has not, worked in the marketplace to date while probing into the reasons behind those developments. For example, would consumers be more inclined to seek out CableCARD-compliant devices if monthly bills separately broke out the cost of the operator-provided box from the charge for the CableCARD pre-installed in that box? Is a truck roll really necessary to install a CableCARD in a box acquired at retail? And, perhaps most important of all, what do consumers consider in weighing whether to lease a box from their MVPD as opposed to buying a box from a third-party provider? How much are technical challenges and fear of being “stuck” with soon-to-be-outmoded hardware or software affecting consumers’ decisions? For me, another question is whatever happened to downloadable security? Answers to these queries will help us decide what we can do to modify today’s CableCARD regulations effectively – and to address the challenges going forward under Section 629, as technological innovation continues to outpace the government’s ability to keep up.

Asking questions, however, should not be taken as a signal that we have prejudged the answers. In particular, I wonder about the assumptions underlying the so-called “All Video” or “AllVid” proceeding, so I am pleased that we are opening that docket with a wide-ranging inquiry. The concept was previewed in the National Broadband Plan as a lever to help spur greater broadband deployment – the notion being that the millions of televisions in American homes connected to cable, satellite or some other form of multichannel video service could provide a wider gateway for residential broadband demand, investment, innovation and deployment. The NOI tees up a specific proposal for comment: new rules requiring the

development and deployment of a small device dubbed an “AllVid adapter” that would combine the MVPD’s security and decryption functions with an open-standards interface to which a variety of devices from many different providers could connect. The vision is that these devices, in turn, could provide consumers with all manner of Internet-based content and applications from third-party sources as well as the video and other offerings from the MVPD.

The idea of accessing the Internet through the TV screen is certainly attractive – so attractive, in fact, that the marketplace already appears to be delivering on that vision without any help from the government. A quick Internet search revealed more than a dozen different devices available to consumers who wish to bring some or all of the Internet to their television screens, ranging from specialized web video products and software applications to elaborate home theater PCs and even online gaming consoles.

And yesterday, in an unscientific effort to learn more about the current state of this rapidly evolving marketplace, I took a little field trip to a local “big box” electronics store to see what kind of Internet TV products are on the shelves right now. I found options ranging from the latest flat-screen TVs preloaded with specific web-based offerings to simpler devices that can move content from the open Internet straight to the TV screen via “high definition multimedia interface” (“HDMI”) cables or through simple wireless technologies. The most popular products cost \$250 or less, and the store was having trouble keeping them in stock. The salespeople reported that in the year and a half since some of these products appeared on the market, they are among the top three video accessories the store sells. Consumers are using them to enjoy “over the top” web-based video on their wide-screen digital TV screens, thereby not only bypassing the video offerings of traditional MVPDs but favoring their new direct competitors as well. In fact, according to the latest comScore data, Americans downloaded more than 28 billion videos in February 2010, more than double the number of downloads during the same month a year ago. It’s not difficult to see the implications of this trend for the future of broadband technologies and the MVPD marketplace.

The lesson from my field trip shows us that the marketplace can and does respond to consumer demand with an array of innovative options and price points that we cannot hope to replicate through regulation. As I review the comments submitted in response to these new Notices, I will bear in mind the need to remain humble about the government’s ability to predict the pace and direction of technological developments. If nothing else, our experience in implementing Section 629 should remind us of the value of modesty in rulemaking.

I thank the staff of the Media Bureau for their hard work on the two Notices, and I look forward to reviewing the information and analyses that commenters will provide to us.