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**AllVid Regulation Risks Harm to  
Next-Generation Video Innovation**

by

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The FCC is considering a pair of waiver petitions from certain regulations for cable set-top boxes. TiVo requests a waiver from an agency-established December deadline requiring Internet Protocol-based (IP) interfacing as well as certain functionalities, such as home networking, in HD set-top boxes. And for certain gateway devices that enable home networking, Nagra seeks relief from the FCC-imposed "integration ban" that prohibits the same device from providing both navigation and security functions.

Predictably, perhaps, pro-regulatory proponents are insisting the FCC use the waiver proceedings as a springboard for the agency's [outdated and ill-advised "AllVid" proposal](#). The AllVid proposal would subject all multi-channel video programming distributors (MVPDs) to new device design regulations. But the waiver proceedings are narrow in scope. Administratively, they surely are not proper vehicles for the FCC to impose broad new restrictions on video devices.

Government should not intrusively regulate next-generation video devices. To do so risks freezing into place bureaucratic preferences and predictions when the market is undergoing rapid change. That will likely harm the competitive and innovative forces prevalent in today's video market. AllVid is a flawed concept that fails to take seriously

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the dynamic nature of the market. If the FCC is to make any moves regarding AllVid, it should take separate action to close its AllVid proceeding.

In 2010, the FCC tweaked its CableCARD regulations to "require cable operators to include an IP-based interface on all two-way high-definition set-top boxes that they acquire for distribution to customers." The FCC also mandated that by December 1, 2012, cable operator-delivered set-top boxes include functionalities such as "service discovery, video transport, and remote control command pass-through standards for home networking." In both respects, however, the FCC did "not mandate a particular means by which these functionalities are to be provided."

With the December deadline looming, [TiVo seeks a waiver](#) from the new requirements until 12 months after cable operators definitively develop and deploy set-top boxes standards that are regarded as compliant with the FCC's baseline IP interface and functionality mandates.

Meanwhile, [Nagra petitioned for a waiver](#) from both the FCC's set-top box "integration ban" and from its rules requiring devices contain either DVI or HDMI ports. Nagra has requested a waiver be granted for gateway devices that transmit audiovisual content to home networks. The scope of Nagra's waiver essentially mirrors the requirements that the FCC set out in its AllVid proposal.

And so the waiver proceedings have generated another round of debate regarding AllVid. In public comments, the consumer electronics' lobby urged the FCC to jump-start its troublesome AllVid plan for regulating the design of next-generation video navigation devices.

The FCC's AllVid proposal would mandate that all MVPDs make available to subscribers a special "adapter." The Allvid adapter must operate as a "set-back" device containing certain functionalities (such as access, provision, decoding, and reception) to connect to all video navigation devices (including those manufactured by companies unaffiliated with MVPDs). Alternatively, MVPDs must use an AllVid adapter as a "gateway" device for allowing all consumer electronic devices throughout a subscriber's home network to access MVPD services.

But [the FCC's AllVid proposal is highly problematic](#) in several respects. Consider the following:

- There is no case to be made for expansive new regulation when a market is vibrant and continuously generating new waves of innovative products and services. Today's video market is characterized by: increasing consumer choice among competing MVPDs; rising online video distributor (OVD) services – such as Amazon Prime and Netflix; growing numbers of independently-provided devices and services for viewing video – including Internet or Wi-Fi connected smart TVs and video game consoles; and proliferating mobile devices for viewing video content. Additional developments in the video market include: the rapid

adoption of HD video; digital video recorder (DVR) options; video-on-demand functions; cloud-based delivery of MVPD services; TV-everywhere; and whole home networking – an important subject of TiVo's and Nagra's waiver petitions. With such vibrant market conditions, any new government controls are a solution in search of a problem.

- [Government designing devices is a bad idea](#), and it can create inefficiencies that drive up costs for consumers. Engineering and business decisions involve trade-offs and judgment calls that are the province of market providers. Bureaucratically second-guessing these decisions can lead to products and services that are costly and cumbersome. Consumers may simply reject the products and services features compelled by regulations. My *Perspectives From FSF Scholars* essay, "[The FCC's Continuing, Costly Video Navigation Device Regulation](#)," cites just such an example in the cable set-top box context:

[T]he Commission finally eliminated its requirement that cable operators include a Firewire data connection interface in all HD set-top boxes they distribute to customers...the Firewire mandate was a bust. Industry claims some \$400 million in compliance costs for a data port that was never successfully adopted in the marketplace. Most HD TV owners, for instance, use HDMI ports for audio and video transfers, not FCC-mandated Firewire ports.

- Ongoing innovation would be threatened by regulations that define how video devices should be designed and restrict what kinds of functions they can perform. As I explained in my blog post "[FCC's 'AllVid' Regulation of Video Devices All Wrong](#)":

"AllVid" would prohibit MVPDs from including some of the so-called "adapter" functions in the video navigation devices they make available to their own subscribers. This means that consumers would be unable to lease a DVR or other type of advanced device with all functions integrated into that one device. Subscribers would instead need to get an "AllVid" adapter containing some of the functionalities to go with the leased DVR or other device in order to obtain full functionality. This proposed restriction on what MVPDs can make available to consumers mirrors the FCC's current "integration ban" for set-top box regulations.

- Aspects of AllVid also pose First Amendment free speech problems. This is detailed in my *Perspectives* essay, "[The AllVid Proposal's First Amendment Problem: Exploring the FCC's Constitutionally Defective Device Regulation](#)":

The FCC's AllVid proposal to require disaggregation or unbundling of MVPD video programming and related content undermines the speech selection and presentation choices of MVPDs. Undercutting

the editorial discretion of MVPDs in their provision of a retail service, AllVid would force MVPDs into a wholesale role to enable third-party, unaffiliated consumer equipment manufacturers to rearrange and supplement MVPD content with their own content, displacing the content of MVPDs.

To the extent that granting CableCARD waivers to TiVo and Nagra will avoid regulatory uncertainties or avoid harm to their ability to design and market devices, the FCC should do so. And if the grounds for granting those waivers are sound, it might be better for the FCC to grant waivers or otherwise extend the deadline for all cable operators and cable set-top box manufacturers.

But regardless of whether the FCC grants the waivers, it should leave extraneous issues out of the proceedings. The FCC shouldn't use waiver proceedings involving cable set-top box rules to resurrect its ill-conceived AllVid proposal to regulate the designs of all MVPD-provided next-generation video devices. Instead, the FCC's AllVid proceeding should be closed. Let the market forces that are now delivering new video products and services continue on their course.

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#### **Further Readings**

Randolph J. May and Seth L. Cooper, "[Accelerate New Video Breakthroughs by Rolling Back Old Regulations](#)," *Perspectives from FSF Scholars*, Vol. 7, No. 12 (June 17, 2012).

Seth L. Cooper, "[FCC Should Let the Sun Set on Its Set-Top Box Regulations](#)," *FSF blog* (September 21, 2011).

Seth L. Cooper, "[FCC's Proposed 'AllVid' Regulation Ill-Suited to Today's Dynamic Market](#)," *Perspectives from FSF Scholars*, Vol. 6, No. 19 (August 12, 2011).

Seth L. Cooper, "[The AllVid Proposal's First Amendment Problem: Exploring the FCC's Constitutionally Defective Device Regulation](#)," *Perspectives from FSF Scholars*, Vol. 6, No. 8 (March 30, 2011).

Seth L. Cooper, "[FCC's 'AllVid' Regulation of Video Devices All Wrong](#)," *FSF blog* (January 26, 2011).

Seth L. Cooper, "[The FCC's Continuing, Costly Video Navigation Device Regulation](#)," *Perspectives from FSF Scholars*, Vol. 5, No. 25 (October 21, 2010).

Seth L. Cooper, "[Government Shouldn't Design Devices in Dynamic Markets](#)," *FSF blog* (September 23, 2010).

Randolph J. May, "[Don't Inflict Analog Era Equipment Rules On The Digital Age](#)," *Perspectives from FSF Scholars*, Vol. 1, No. 7 (October 2006).