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A Costly Affair: Retaining Outdated Set-top Box Mandates?

by

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Several weeks ago now, Public Knowledge and other policy groups expressed their opposition to the Consumer Choice in Video Devices Act in a letter to Chairman Greg Walden. The bill sponsored by Representatives Bob Latta and Gene Green would remove the "integration ban," an FCC requirement that prohibits a multichannel video-programming distributor from offering set-top boxes that perform security and navigation functions in a single integrated device. In other words, if passed, the bill would allow MVPDs to offer set-top boxes that are unencumbered with unnecessary, soon-to-be-outdated technology at a lower cost to consumers.

The letter from the interest groups asserts that the Consumer Choice in Video Devices Act would "drive up cable prices, reduce consumer choice, and slow down innovation." The letter also states that "high programming costs, unwanted bundles, and a lack of competition make watching TV a costly affair." This negative rhetoric is not supported by marketplace realities. Although cable television does "cost" consumers money, as nearly all communications services and other goods and services do, the *integration ban* in fact causes the imposition of unnecessary costs to cable consumers. Removal of the ban would lower cable prices, would not limit consumer choice, and would remove barriers to innovation.

Under Section 629 of the Telecommunications Act of 1996, Congress gave the FCC authority to create rules that would, in theory, facilitate the ability of consumers to purchase "navigation devices" – set-top boxes, remote controls, and other equipment – from third-party retailers, rather than exclusively from cable providers. Back then, cable providers still dominated the multichannel video marketplace. Under the authority granted to it by Section 629, the Commission adopted rules known as the "integration ban" that banned cable providers from offering customers set-top boxes that contained both security and navigation functions. The seeming intention of this rule was to promote greater choice in set-top boxes, and to facilitate the growth of competition in the video device market.

Despite whatever may have been the good intentions of Congress and the Commission, the integration ban is not what caused competition to increase in the video device marketplace. Instead, innovation and changes in technology, business models, and consumer needs have driven the growth and development of the video marketplace, including the navigation devices segment. Today, the integration ban is merely hindering investment and innovation and should be removed.

The ban has forced consumers to pay higher prices for leased boxes; over $1 billion in excess costs without any additional benefit since 2007, to be precise. In part, this is because the integration ban has forced cable operators to include CableCARDs in equipment they supply even though the same access and security functions could be made available using less expensive technology.

Further, the ban has not increased competition in the set-top box market. In 2006, the FCC admitted, "consumers will face additional costs in the short term" due to the integration ban, but it argued that the costs would decrease over time as more consumers used CableCARD-ready technologies. Unfortunately, the integration ban did not promote competition in the set-top box market as the Commission had hoped. According to NCTA, over 42 million CableCARD-enabled set-top devices have been leased to cable customers, while only 600,000 CableCARDs have been requested by cable customers for use in devices purchased from third-parties. Although the integration ban may have been intended to promote third-party competition in the navigation device market, this attempt by the FCC to manage the market through regulation has clearly not achieved the wished-for outcome. And, both the FCC and industry stakeholders like NCTA agree that a robust market has not materialized.

On February 5, NCTA submitted a letter to Chairman Wheeler explaining how the recent growth, diversification, and innovation in the video marketplace has occurred *in spite of* and not *because of* barriers to innovation and investment, like the CableCARD:

> These exciting developments are not arising from regulatory intervention or from technology mandates. They are driven by marketplace imperatives: consumer demand for mobility and new distribution platforms. Cable operators, other video distributors, equipment manufacturers, and application developers all are working to satisfy that demand… We have learned over the last decade that a prescriptive

> regulatory approach is simply not nimble enough to accommodate marketplace innovation.

NCTA points out that today, cable providers and video distributors are meeting consumer demands through a wide range of devices, many of which *bypass* the CableCARD mandate. Given these developments, NCTA argues that FCC-prescribed technologies, including its stalled AllVid proposal, inhibit, not promote, marketplace innovation and development.

Today, many video services are delivered through IP-based applications that are able to receive the cable operators' IP-based services on various platforms and devices without the CableCARD. Major providers like Comcast, Time Warner Cable, and Cox are among those that have made their services available through these new platforms and devices. Additionally, various online video providers including Netflix and Hulu, and other set-top box, IP, and cloud-based technologies have all experienced major growth in recent years.

Video access devices available today include IP-connected MVPD provided set-top boxes, multi-room DVR and home networking solutions, cloud-based user interfaces, mobile applications, portable media players, gaming consoles, Internet-connected smart phones and table computers, and home monitoring systems that act as extensions of cable MVPD networks. Many of these innovations are the result of consumer demand to access content while avoiding the cost of leasing set-top boxes, which are encumbered by the CableCARD and its accompanying expenses.

All of this is to say that the video marketplace today is characterized by diverse technological and service offerings, rapid innovation and growth, and competition among various providers. The Commission itself recognized the competitive state of the video marketplace in its recently released *15th Annual Video Competition Report*: “Today the [set-top box] marketplace is more dynamic than it has ever been offering consumers an unprecedented and growing list of choices to access video content.” Further, it is important to note that this impressive development is attributable not to technological mandates like the CableCARD, but to marketplace forces, which allow content providers to innovate, invest, and develop freely in response to rapidly changing consumer demands. In the current environment, it is unwise for the FCC even to be considering new mandates such as AllVid.

Despite these developments, Public Knowledge and other groups continue to argue against the removal of the costly integration ban. Christopher Lewis, Vice President at Public Knowledge, stated:

> “It’s important that the FCC maintains the power to promote video device competition. FCC rules make it possible for competing electronics box manufacturers to create products that keep prices low and push forward innovation. If competing video device makers are eliminated, there is little to no incentive for large operators to keep their devices affordable or easy to use.”

Despite claims like this, the Consumer Choice in Video Devices Act would neither eliminate competing video device makers nor disincentivize cable operators from offering affordable, consumer friendly devices. Instead, the Act would eliminate the unnecessary costs presently resulting from the integration ban, and remove this outdated barrier to innovation in the set-top box market.

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Further Readings

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