Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	MB Docket No. 14-16

COMMENTS OF

THE FREE STATE FOUNDATION[*]

I. Introduction and Summary

These comments are submitted in response to the Commission's request for comments regarding the Communications Act's requirement that the Commission report annually on "the status of competition in the market for the delivery of video programming,"[1] The requirement's purpose is to help keep the Commission's regulatory policies in line with video marketplace realities and that is the focus of these comments. Today, the video market is flourishing. Indeed, D.C. Circuit Judge Brett Kavanaugh was correct when, in his May 2013 opinion in the "Tennis Channel" case, he said: "In today's highly competitive market, neither Comcast nor any other video programming distributor possesses market power in the national video programming distribution market."[2] But legacy regulations threaten to slow the pace of innovation and growth

[*] These comments express the views of Randolph J. May, President of the Free State Foundation, Sarah K. Leggin, Legal Fellow, and Seth L. Cooper, Senior Adjunct Fellow. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is an independent, nonpartisan free market-oriented think tank.
[1] Section 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 548(g).
[2] *Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982, 994 (D.C. Cir. 2013) (Kavanaugh, J., concurring). Judge Kavanaugh's concurrence followed an earlier opinion in which the D.C. Circuit had concluded, in the context of overturning the Cable Act's limit on the number of subscribers held by one cable operator, that "[c]able operators,

and pass unnecessary costs onto consumers.

In its forthcoming *Sixteenth Report on Video Competition Report* the Commission should recognize that the market for the delivery of video programming is effectively competitive. And it should take the opportunity to pursue the sunset of regulations – like the video device integration ban – that have failed to promote competition as intended or that are inconsistent with the current state of the video marketplace.[3]

Despite the apparent best intentions of Congress and the Commission, video device regulations under Section 629 of the Telecommunications Act have *not* caused competition to increase in the video device marketplace. Instead, growth, diversification, and innovation in the video marketplace have occurred *in spite of* regulatory barriers to innovation and investment like the integration ban. The integration ban was proposed when cable providers still dominated the multichannel video programming distributor ("MVPD") marketplace. At that time the Commission did not contemplate the existence of online video distributors ("OVDs") or other innovations. Today, companies are increasingly expanding their offerings to compete across platforms. This convergence has led voice providers to enter the broadband and MVPD markets and to offer cable television, IP, streaming, and over-the-top services. The rapid growth of OVDs and changing consumer demands further fuel this virtuous cycle, driving innovations in content delivery platforms and devices.

Despite the significant innovation and rivalry evident in today's video marketplace, the Commission declined to declare the market "effectively competitive" in its *Fifteenth Annual*

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therefore, no longer have bottleneck power over programming that concerned Congress in 1992." *Comcast Corp. v. FCC*, 579 F 3d 1, 8 (D.C. Cir. 2009).

[3] 47 U.S.C. § 629(e).

Report on Video Competition.[4] This failure is likely, whether calculated or otherwise, to prolong the already overextended life of legacy video regulations. By remaining mute about the market's competitiveness, the Commission also lends unmerited credence to calls for future regulatory intervention. Enforcing regulations premised on supposed video market deficiencies while ignoring the effectively competitive state of the market results in a policy mismatch that is harmful to consumers.

The Commission should bring its regulatory policy for video services into alignment with the competitive conditions that characterize today's market. Alignment efforts should begin with the Commission expressly recognizing that the MVPD market is effectively competitive and eliminating the cable set-top box integration ban. Such efforts should proceed with the Commission laying the groundwork for sunsetting all Section 629 regulations while, at the same time, determining the video device market is fully competitive. This finding should also spur the Commission or Congress, as appropriate, to remove other video regulations that have placed unreasonable burdens on video service providers and consumers, and that are no longer supported by current video market conditions. Obtaining alignment with video marketplace realities requires deregulatory action to better allow continuing investment and innovation and to enhance consumers' welfare through new products and services.

Finally, although perhaps not at the core of what the Commission considers to be the central purpose of this proceeding to assess the competitiveness of the video marketplace, the Commission should have in mind that its regulatory actions in this area have serious First Amendment implications. Indeed, the impact of its actions on the First Amendment's free speech guarantee should always be at the core of the Commission's consideration. Judge Kavanaugh's

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[4] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fifteenth Report, FCC 13-99, MB Docket No. 12-203 (released July 22, 2013) ["*15th Annual Report*"]: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-99A1.pdf.

opinion in the "Tennis Channel" case warrants special attention in this regard. Referring to what he called "massive changes" in the video marketplace over the last two decades, and invoking established First Amendment jurisprudence, Judge Kavanaugh declared that "[i]n restricting the editorial discretion of video programming distributors, the FCC cannot continue to implement a regulatory model premised on a 1990s snapshot of the cable market."[5] Respect for the First Amendment demands no less.

II. The Video Market Is Effectively Competitive

Recognizing the competitive nature of the video market is a necessary first step in bringing about regulatory reforms to reflect marketplace realities. In the Commission's *Fifteenth Report*, it stated that by the end of 2012, cable providers represented only 55% of the more than 100 million households that subscribe to all MVPDs overall.[6] Meanwhile telephone and direct broadcast satellite MVPDs gained market share, claiming about 8.4% and 33.6% of all MVPD subscribers respectively.[7] By the end of 2013, cable providers only held 52% of MVPD subscribers.[8] At the end of 2011, 98.6% of subscribers or 130.7 million households had access to at least three MVPDs, 35.3% or 46.8 million households had access to at least four, and some areas had access to as many as five MVPDs.[9]

Clearly, today's video market is far different from that of the early 1990s, when the cable television industry had grown "highly concentrated."[10] Most Americans had access to only one MVPD, and cable operators controlled approximately 95% of the national market for video

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[5] 717 F.3d at 994
[6] *15th Annual Report*, at ¶ 3.
[7] *Id.* at ¶ 27.
[8] Jeff Baumgartner, "Loss Equals 0.1% of All Video Subscribers, Leicthman Research Group Says," www.multichannel.com (March 14, 2014 01:33 pm), http://www.multichannel.com/distribution/top-us-pay-tv-providers-lost-105000-subs-2013/148867.
[9] *15th Annual Report*, at ¶ 36.
[10] 1992 Cable Act, § 2(a)(4).

programming subscribership.[11] Those conditions prompted Congress to impose regulations to facilitate the entry of new programmers and media voices.

Consumer demands, technological convergence, and low barriers to entry all allowed new competitors and business models to drastically transform the video landscape. The emergence of telephone MVPDs like AT&T and Verizon marked the most significant change in the status of competition in the FCC's *Fourteenth Annual Video Competition Report*.[12] These companies and their U-verse and FiOS services were available to one-third of U.S. homes by the end of 2010, accounting for approximately 6.5 million customers.[13] At the end of June 2012, AT&T's U-verse and Verizon's FiOS services had 8.6 million subscribers combined.[14] By the end of 2013, telco MVPDs had accumulated over 10 million subscribers.[15]

The online video distributor ("OVD") market segment has also dramatically grown and evolved. OVDs allow consumers to access content through game consoles, OVD set-top boxes, smart TVs, and other technologies. From May 2011 to May 2012, unique viewers of online video content increased by more than four million.[16] The FCC's *Fifteenth Report* cited an SNL Kagan study, which estimated that by the end of 2012, there would be 41.6 million Internet-connected

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[11] *See In re* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Further Notice of Inquiry, 26 FCC Rcd 14091, 14092-3, ¶ 2 (2011).
[12] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fourteenth Report, MB Docket No. 07-269, at ¶ 80 (released July 20, 2012) ["*14th Annual Report*"] (citing "Cable TV Investor: Deals & Finance," SNL KAGAN, at 7-8 (Oct. 31, 2011).
[13] "U.S. Multichannel Industry Benchmarks," SNL KAGAN: http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx (visited Dec. 21, 2011).
[14] *15th Annual Report*, at ¶ 3.
[15] Jeff Baumgartner, "Loss Equals 0.1% of All Video Subscribers, Leicthman Research Group Says," www.multichannel.com (March 14, 2014 01:33 pm): http://www.multichannel.com/distribution/top-us-pay-tv-providers-lost-105000-subs-2013/148867.
[16] Press Release, "comScore Releases May 2012 U.S. Online Video Rankings," COMSCORE (June 18, 2012): http://www.comscore.com/Press_Events/Press_Releases/2012/6/comScore_Releases_May_2012_U.S._Online_Video_Rankings; Press Release, "comScore Releases May 2011 U.S. Online Video Rankings," COMSCORE (June 17, 2011): http://www.comscore.com/Press_Events/Press_Releases/2011/6/comScore_Releases_May_2011_U.S._Online_Video_Rankings.

television households, representing 35.4% of all television households.[17] The *Fifteenth Report* also noted the continued growth of non-cable MVPDs, rapid deployment and adoption of other new technologies that enable time and space shifting, and other developments that offer further options for consumer video viewing.

In addition to the vigorous competition among the three recognized categories of multi-channel video distribution (MVPDs, broadcast television stations, and OVDs), the video marketplace offers consumers a wide range of devices through which to access video content. 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. Consumers can choose whether to lease a set-top box from their cable operator or buy devices at retail that enable them to watch cable, broadcast, and online programming.

For example, streaming apps and mobile platforms like Apple's iOS and Google's Android provide many consumers access to cable programming offered by Comcast, Time Warner Cable, Cox, Charter, Cablevision, and Bright House. Comcast and Time Warner Cable programming can also be accessed by Microsoft's Xbox 360, and Time Warner Cable provides its subscribers access to video-on-demand services through additional devices like Roku and Samsung Smart TV's.

Non-cable operators like DirecTV, DISH, AT&T, and Verizon have also made their content available through iOS and Android mobile platforms and devices. DirecTV offers its programming through DIRECT Ready TVs and Samsung TVs. Additionally, DISH and DirecTV offer their programming through smart TVs that do not require a set-top box or other receiver.

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[17] *15th Annual Report*, at ¶ 314.

Finally, online video providers have been steadily gaining market share. In its *Fourteenth Report,* when the FCC first devoted a category to online video, it noted that Internet-based distribution of video had already "undergone dramatic transformation," and was "evolving from a niche service into a thriving industry."[18] Since then, the OVD segment has continued to rapidly evolve. For example, by the end of 2013, Netflix had 44 million customers,[19] compared to 21.7 million Comcast customers, and 11.4 million Time Warner Cable customers.[20] OVDs have made their programming available on smartphones, tablets, and laptops as well as new connected devices like Roku, Apple TV, and game consoles like Xbox 360, PS3, and Wii. Individual cable and broadcast networks have also embraced streaming services, with CNN, ESPN, MTV, and ABC among the networks that offer their content by live stream or on-demand.

The Commission should recognize this abundance of consumer choice and healthy rivalry in the video marketplace by acknowledging its effectively competitive status in the forthcoming *Sixteenth Report.*

III. Current Video Regulations Do Not Reflect Marketplace Realities

There is a clear disconnect between the effectively competitive state of the current video market and the outdated legacy video regulations in place today. Despite the dramatic changes in competitors' business models and market share, the diversification in modes of access to content, and the vast proliferation of consumer choice, in the past few *Reports* the Commission has downplayed the effects of cross-platform and inter-modal competition. By continuing to analyze the converged, competitive, rapidly changing marketplace through a 1990s analog-era lens, the

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[18] *14th Annual Report*, at ¶ 237.
[19] Victor Luckerson, "Netflix Mulls Price Tiering as Subscriber Numbers Soar," TIME: BUSINESS & MONEY (January 22, 2014): http://business.time.com/2014/01/22/netflix-number-of-subscribers-grows-greatly-in-q4/.
[20] William Alden, "The Comcast-Time Warner Deal, by the Numbers," NEW YORK TIMES: DEALBOOK (February 13, 2014): http://dealbook.nytimes.com/2014/02/13/the-comcast-time-warner-deal-by-the-numbers/?_php=true&_type=blogs&_r=0.

Commission prolongs the life of hopelessly outdated regulations, and even appears inclined to impose new regulatory mandates.

The Commission's approach to video devices provides a clear example of the divide between regulatory policies and marketplace realities. Under Section 629 of the Telecommunications Act of 1996, Congress gave the FCC authority to create rules that would, in theory, increase competition in the navigation device market.[21] When it first implemented Section 629 in 1998, the Commission found that local markets for the delivery of video programming were still "highly concentrated" and "could permit the exercise of market power by incumbent cable systems."[22] And despite any statutory requirement that it do so, the Commission imposed a ban on cable operators and device manufacturers' offering customers set-top boxes that offered both security and navigation functions in a single device. Through the "integration ban" and the subsequent CableCARD technological mandate, the Commission seemingly hoped to facilitate the ability of consumers to purchase set-top boxes, remote controls, and other equipment from third-party retailers rather than from cable providers.

While the Commission's integration ban generates real compliance and innovation opportunity costs, it has generated scarce consumer interest in regulation-enabled third-party devices. As the *Fourteenth Report* put it, "[c]onsumer adoption of retail CableCARD-compatible devices has not matched the Commission's expectations."[23] While over 45 million CableCARD-enabled set-top devices have been leased to cable customers, only 606,000 CableCARDs have been requested by cable customers for use in devices purchased from third-parties.[24] The

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[21] 47 U.S.C. § 629 (1996), as amended.
[22] Synopsis of the 1996 Report, 62 Fed. Reg. 5628 (Feb. 6, 1997): http://www.gpo.gov/fdsys/pkg/FR-1997-02-06/pdf/97-3057.pdf.
[23] *14th Annual Report*, at ¶ 395.
[24] NCTA, Letter: "Commercial Availability of Navigation Devices," CS Docket No. 97-80, (January 31, 2014): http://apps.fcc.gov/ecfs/document/view?id=7521069770.

Commission's integration ban and the CableCARD technical mandate have resulted in over $1 billion in compliance costs, inevitably passed on to paying cable customers.[25]

IV. The Commission Should Remove the Costly Integration Ban and Establish a Roadmap for Sunsetting its Video Device Regulations

Rather than simply repeating admissions of how its video device policy has failed, the Commission should undertake overdue reforms of its set-top box regulations. Foremost among these is the costly integration ban. Further steps must then be made in order to relieve video service providers of costly regulatory burdens and to better encourage further marketplace innovation and investment.

In its forthcoming *Sixteenth Report*, the Commission should recognize the effectively competitive state of the video market as well as current consumer behavior patterns – and eliminate the integration ban. The growth of MVPD competition and the proliferation of unregulated video-capable devices such as gaming consoles, smart TVs, and tablets render the integration ban unnecessary.

The Commission can declare that there is effective competition in the nationwide MVPD by applying analysis its own "competing provider test" for determining whether a local franchise area is effectively competitive.[26] According to the test, effective competition in a local market exists if at least two unaffiliated MVPDs offer comparable video services to half of the area's households and the number of households subscribing to service other than the largest MVPD exceeds 15%. The nationwide MVPD market would pass the "competing provider test" for effective competition with flying colors.

Regulations designed to render set-top box devices unsecure or otherwise inoperable

[25] Statement of Congressman Bob Latta, "A New FCC or the Same Old, Same Old," *FSF Lunch Seminar*, at 30 (October 24, 2013): http://www.freestatefoundation.org/images/October_24_2013_Transcript.pdf.
[26] *See* 47 U.S.C. § 543(a)(2)-(5); 47 C.F.R. § 76.905(b)(2).

without inserting separate piece of costly security make no sense. Yet that is what current Commission policy requires. Although the same access and security functions could be performed using less expensive technology, the Commission prohibits it.

In fact, the integration ban has resulted in a bizarre scenario whereby device manufacturers must petition the Commission for permission to offer consumers video devices that download security functions via the Internet.[27] Absent waivers, such security downloads are banned. This regulatory barrier to innovation and consumer choice is misguided.

Going forward, the integration ban also risks putting cable operators at a competitive disadvantage since the ban applies only to them and not to DBS providers or telco MVPDs. Consumer welfare is more likely to be improved where MVPDs are free to compete on service quality and price rather than where regulation tilts the playing field by making delivery of certain services more costly than others through artificial means.

And even if regulations were necessary to ensure the commercial availability of third-party video navigation devices, the integration ban is unnecessary under Section 629. Congress did not require the integration ban. Rather, the Commission imposed it. Banning the integration of security and navigation functions in a single device is counterproductive regulatory overkill. Less restrictive alternatives to the integration ban exist. For instance, the Commission could simply require cable operators to take reasonable steps to ensure their services are viewable on secure third-party devices.

But eliminating the integration ban is only the first step. Given the great variety of choice

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[27] *See, e.g.*, Public Notice, In the Matter of Buckeye Cablevision, Inc. Request for Waiver from 76.1204(a)(1) of the Commission's Rules, MB Docket No. 14-42 (March 7, 2014): http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0307/DA-14-321A1.pdf; Memorandum and Opinion Order, In the Matter of Charter Communications, Inc. Request for Waiver from Section 76.1204(a)(1) of the Commission's Rules ("*Charter Waiver Order*"), MB Docket No. 12-328 (April 18, 2013): http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0418/DA-13-788A1.pdf.

in services and devices providing consumers access to video programming, it is clear that the video device market is no longer an area where the FCC needs to be so intrusively involved. The competitive structure of today's video marketplace and corresponding consumer behavior trends warrant a determined effort by the Commission to dismantle analog-era regulations that were premised upon monopolistic conditions that no longer exist.

The Commission should adopt a roadmap for sunsetting its remaining Section 629 set-top box regulations. Section 629 specifically provides a sunset provision which allows the regulations adopted "shall cease to apply when the Commission determines that: (1) the market for the multichannel video programming distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest."[28] The prevalence of MVPD competition, the rise of OVD alternatives, and the availability of different video-viewing devices supply ample evidence for the Commission to declare the above markets "fully competitive" and to sunset its Section 629 regulations.

The competitive state of the marketplace should also spur the Commission to remove other video regulations that are within its discretion and it should spur Congress to remove still others. The structure and behavior of today's marketplace does not warrant more regulation, but instead "the assiduous pruning and elimination of those rules and regulations aimed at remedying the perceived lack of competition in a world that no longer exists."[29] Free State Foundation scholars have often discussed the need for the Commission to end analog-era regulation of the digital age

[28] 47 U.S.C. 629.
[29] Reply Comments of The National Cable & Telecommunications Association, In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 07-269, at 10 (July 8, 2011).

video market.[30] The time is right for the Commission to make a competitiveness finding in its forthcoming *Report* and for the agency and Congress to eliminate outdated requirements such as program access, program carriage, leased access, and must-carry among others.

V. The Commission Should Refrain from Imposing or Re-imposing New Barriers to Innovation and Growth in the Video Market

The Commission should also abstain from imposing new regulations or technological mandates on the video device market. As the Commission recognized in its *Fifteenth Report*, "[t]oday the [video device] marketplace is more dynamic than it has ever been offering consumers an unprecedented and growing list of choices to access video content"[31] Apparently, the Commission does not attribute the impressive development to marketplace forces, which in fact have allowed MVPDs, device manufacturers, and video content providers to innovate, invest, and develop freely in response to rapidly changing consumer demands. Instead, the Commission and other pro-regulatory advocates seem to believe that technological mandates and regulatory intervention have promoted competition.[32] This despite substantial evidence to the contrary.[33] The Commission's stalled "AllVid" proceeding is evidence of this skewed perspective.

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[30] *See, e.g.*, Donna Coleman Gregg, "'Low Ranking' Counterproductive Video Regulations Offer Valuable Lessons," *Perspectives from FSF Scholars*, Vol. 8, No. 11 (April 29, 2013): http://freestatefoundation.org/images/Low-Ranking_Counterproductive_Video_Regulations_Offer_Valuable_Lessons_042913.pdf; Seth L. Cooper, "Digital-Era Video Devices Shouldn't Be Subject to Analog-Era Regulations," *FSF Blog* (April 12, 2013): http://freestatefoundation.blogspot.com/2013/04/digital-era-video-devices-shouldnt.html; Seth L. Cooper, "Video Competition Should Lead FCC to End Old Regulation," *FSF Blog* (May 4, 2011): http://freestatefoundation.blogspot.com/2011/05/video-competition-should-lead-fcc-to.html; Randolph J. May, "Don't Inflict Analog Era Equipment Rules on the Digital Age," *Perspectives from FSF Scholars*, Vol. 1, No. 7 (October 2006): http://freestatefoundation.org/images/Don_t_Inflict_Analog_Era_Equipment_Rules_On_The_Digital_Age.pdf.

[31] *15th Annual Report*, at ¶ 354 (2013).

[32] Letter from Public Knowledge et al. to Chairman Greg Walden, re: Consumer Choice in Video Devices Act (December 5, 2013): http://www.publicknowledge.org/files/Consumer%20Groups%20Latta%20Bill%20letter%20FINAL.pdf.

[33] *See, e.g.*, *15th Annual Report*, at ¶ 362 (citing Navigation Devices Third Report and Order, 25 FCC Rcd at 14660, ¶ 4).

New technological mandates like the Commission's proposed AllVid regulations are inappropriate given the inter-modally competitive state of the video marketplace, and the pace of innovation which would quickly outrun the useful life of any agency-imposed technical standard.

AllVid regulations would expand the Commission's already over-burdensome, unnecessary set-top box regulations and extend new design specification requirements to all video navigation devices made available by MVPDs, including devices capable of viewing content downloaded from the Internet. If adopted, AllVid would expand the FCC's reach into hardware, logic, applications, and content layers of navigation devices. This would involve implementation costs and complicate the already complex balance manufacturers must strike between technological and financial constraints in the innovation process. The Commission should *not* further intrude into the business of designing commercial media technologies. The need for regulatory restraint is especially strong in the video market, where innovation is constant and technical mandates are often rendered obsolete by rapid market developments.

Refraining from imposing new video device regulations should mean refraining from re-imposing CableCARD technical mandates. As the Commission has recognized, the D.C. Circuit's decision in *EchoStar v. FCC* (2013), "eliminated the requirement that cable operators continue to support CableCARD as a means of complying with the integration ban."[34] Nonetheless, the Commission is apparently mulling a re-imposition of CableCARD.[35]

Re-imposing CableCARD mandates would be a mistake. Business models, devices, and platforms in the video market today have created new marketplace demands outside of technical mandates like CableCARD. Cable operators have ample means of supplying conditional access

[34] *Charter Waiver Order*, at ¶ 9.
[35] *See* Public Notice, In the Matter of TiVo's Petition For Rulemaking To Reinstate The Commission's Second Report and Order Implementing Section 629 Of The Act And Associated Rules, CS Docket No. 97-80 (July 24, 2013): http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-13-1626A1.pdf.

and security functions in a single device using less expensive technology than CableCARD's strictures would demand. Just as nothing in Section 629 requires the Commission impose the integration ban, nothing requires that the Commission impose CableCARD to satisfy its integration ban. Nor should CableCARD be treated by the Commission as the exclusive means for cable operators to satisfy Section 629. At best, the Commission should regard CableCARD as a safe harbor for Section 629 compliance while leaving cable operators free to form innovative partnerships with device manufacturers and offer additional choices to consumers.

VI. Conclusion

It is increasingly obvious that the old, analog-era regulations still saddling the video device market do not square with the reality of the competition and consumer choice that now exists. The Commission should take the opportunity presented by its forthcoming *Annual Report* to confront that reality by declaring the MVPD market "effectively competitive." The Commission should eliminate the integration ban that is nowhere required by statute and which was premised on monopolistic conditions that no longer exist in the video marketplace. Further, the Commission should pursue a near-future sunset of its Section 629 regulations, as the rise of OVD alternatives and new video device choices have moved the video market toward "fully competitive" status. And the Commission should refrain from imposing or re-imposing additional video device regulations that would threaten investment and innovation in future video device breakthroughs, thereby undermining consumer welfare. Finally, rather than constrain the dynamic video marketplace by ignoring realities and prolonging the overextended life of legacy

technological mandates, the Commission should enable the acceleration of video device innovation and consumer choice by removing these and other outdated regulatory restrictions.

Respectfully submitted,

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