

**Written Testimony of  
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Before the  
House Committee on Energy and Commerce  
Subcommittee on Communications, Technology, and the Internet  
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My name is Eric Shanks. I am Executive Vice President, Entertainment at DIRECTV. Thank you for allowing me to testify this morning. For the last several months, the FCC has been hard at work on a plan aimed at expanding the deployment of broadband technology and increasing innovation in the marketplace. In particular, we applaud the FCC for recognizing the role that video providers like DIRECTV are playing and will play in the effort. While DIRECTV supports the FCC's goals of increased innovation and access to broadband, we have serious concerns with the way it proposes to achieve those goals.

As part of its efforts, the FCC may require cable, satellite, and other providers of video services to develop an "All Video Adapter" that would connect the provider's service with third parties' "smart video devices." The FCC envisions the adapter to be small, inexpensive and with limited functionality. In addition, the proposal would allow third parties to disaggregate our service and replace it with their own.

This one-size-fits all approach ignores the unique technologies that distinguish satellite from cable and would adversely impact consumers, stifle innovation and undermine longstanding efforts to stimulate competition. More importantly, we do not believe government intervention is necessary. Innovation and the convergence of broadband and television are prevalent in the market today and growing. DIRECTV is helping to drive this effort, consistent with its history of providing new, innovative

features, including remote DVR technology, Common Sense Media ratings, and NFL Super Fan. In addition to the Boxees and the PlayStation 3s that allow consumers to access content on the Internet today, DIRECTV consumers can access Internet radio, Flickr and YouTube through our system directly; and will soon have available to them a media center that allows content to be moved around their home, and broadband and video content to be integrated on their televisions.

The FCC proposal, as drafted, fails to recognize what is occurring in the market today and will have the opposite effect of what is intended. First, it would place DIRECTV's innovative services at risk; second, it would skew the competitive landscape in favor of cable; and third, it would result in increased costs and inferior service for the consumer.

While we have serious concerns about the current proposal, we applaud the FCC for its willingness to explore alternatives that would achieve its policy goals. We believe the RVU Alliance is one such alternative underway that encourages innovation from both the CE manufacturers and the video distributors. This consortium of over two dozen distributors and manufacturers is developing an open standard technology that will enable consumer electronics manufacturers to integrate broadband and video content on televisions *and* to move all of that content throughout the home using a single media center, thus eliminating the need for multiple set-top boxes, let alone a government designed set top box.

**I. THE ALL VIDEO ADAPTER PROCEEDING RISKS HARMING INNOVATION, COMPETITION, AND CONSUMERS**

**A. The FCC Proposal Places DIRECTV's Innovative Services at Risk**

At DIRECTV, we have built our business through innovation. When we started almost twenty years ago, we had to compete by offering a better television experience—better picture quality, more channels, and better customer service. We were the first to deliver all-digital channels, the first to use MPEG-4 compression, and the first to introduce a substantial slate of HD programming. We have won eight Emmys for our technology, including our interactive NFL Sunday Ticket and other sports features. Simply put, DIRECTV is where it is today because it recognized that the market would reward better and more innovative service.

It is imperative we do even more today to remain competitive. DIRECTV launched a remote DVR application on computers and smart phones and introduced TV apps; we're incorporating Common Sense Media ratings in our guide, introducing 3-D television, and allowing consumers to access sites on the Internet, such as YouTube and Flickr. In the last fifteen months alone, we have downloaded 76 new features to our set-top boxes. We do more than simply transmit "plain vanilla" programming; these features and services create the video experience that is unique to DIRECTV. This is how we compete. The video we will show at the hearing provides just a glimpse of what our subscribers have come to expect from their DIRECTV service.

All of our intelligence and the features I have just described reside in the set top box. The box is the brains of our operation. Unlike cable, there is no headend in the ground that can store all the "smarts" needed to ensure these services work. Our headend

is essentially in the set-top box in the home. The FCC's proposal, however, would limit our ability to put intelligence and storage capacity into an All Video Adapter. By doing so, it substantially harms our ability to innovate. Even if we could continue to place our intelligent boxes behind the adapter, those consumers who purchased third party "smart devices" would not have access to the same advanced features or functionality they expected when they chose DIRECTV.

Under the FCC's proposal, moreover, innovation would be stalled if we had to wait to offer features until enough third-party box manufacturers chose to upgrade their boxes. For example, DIRECTV is currently able to roll out 3D television in a matter of months by downloading software to nearly all of our set-top boxes. Under the FCC's proposal, we would have to wait until third-party manufacturers decided to upgrade their devices—or try to justify the expense of 3D rollout to a fraction of our subscriber base while leaving the others behind.

The bottom line is that the FCC proposal would ultimately weaken the performance incentives created by the market, unraveling the lynchpin of DIRECTV's success while, as discussed below, inadvertently rewarding the cable industry.

**B. The FCC Proposal Would Skew the Competitive Landscape in Favor of Cable**

The proposal would harm satellite and skew the competitive playing field in favor of the incumbent cable industry. The FCC's plan intends to treat cable, satellite, and telco providers equitably, thus encouraging competition. But because different video providers use different technologies, a one-size-fits-all mandate would actually harm competition. To be clear, we are not advocating an All Video Adapter mandate for cable

or satellite or any other provider. All distributors should be free to optimize their network and services as they see fit. Because of our one-way architecture, however, the FCC's approach would be more damaging to satellite.

Unlike satellite, cable has a two-way architecture, in which information flows back and forth from the headend to the set-top box. This means a cable operator can place its functionality (DVR, Video on Demand, programming guide, etc.) either in its set-top boxes or at the headend, depending upon what it believes best optimizes its service. Thus, if the FCC were to mandate the All Video Adaptor, cable operators could respond by placing features in the headend, passing all of the functionality through the adaptor to its own boxes and downstream "smart devices." This is not an option for satellite. As explained above, our headend is in the home, residing in the DIRECTV set-top box. This means that third-party devices would have access to all cable features, but not all satellite features. If someone invests hundreds of dollars in equipment to find out later that it doesn't work with DIRECTV, but does work with cable, she would have a significant incentive to switch to cable.

In the absence of allowing for the flexibility required to maintain competitive parity, the FCC proposal would set back the federal government's longstanding efforts to stimulate competition between cable and satellite industries. In so doing, it will revive old problems (competition) even as it tries to solve new ones (broadband access).

**C. The FCC Proposal Would Harm Consumers Through Increased Costs and Inferior Service**

The FCC believes that an All Video Adapter mandate would foster innovation and lead to a better television experience. While we laud this goal, we think the proposal, instead, runs the risk of leading to higher prices and inferior service.

As mentioned above, unless we can put our intelligence in the adaptor/set-top box, there is no guarantee that DIRECTV subscribers would be able to receive all the innovative features they expected when they chose DIRECTV. The subscriber is left with three choices: One, he pays more for another set-top box from DIRECTV to get the services he expected; two, he settles for an inferior service; or three, he switches providers.

Furthermore, there is no way to ensure that consumers can make a truly informed decision when purchasing third-party equipment. Even if the smart device manufacturer disclosed which services a subscriber can or cannot receive today, there is no way to adequately advise consumers that their devices may not work with future innovations. For example, a consumer who purchased a smart device last year would not have known that, this year, she wouldn't receive 3D television, Common Sense Media ratings, or be able to access YouTube videos through our system.

In addition, allowing third party devices to disaggregate our service and develop their own user experience will diminish the industry leading customer service they expect from DIRECTV. For example, our history has shown us that DIRECTV cannot adequately help our subscribers navigate through multiple third-party television interfaces. When we first launched service, there were hundreds of models of set-top

boxes, each with its own controls and features. We struggled to help subscribers handle even the most basic functions, such as setting their parental controls or turning on closed captioning. Today, even though six manufacturers make our boxes, all of them offer a consistent experience. Our customer service is indisputably better.

Under the FCC's proposal, we also would lose clear lines of responsibility for customer service. We receive 140 million phone calls per year on a wide range of issues, including set-top box functionality and features. Who will take these calls when customers have problems with the smart device?

Today, a customer with a problem knows to call us. Indeed, sometimes the subscriber doesn't even have to call us. Our boxes can now perform self-diagnostic testing to determine the nature of a problem. Very soon, they will automatically relay that information to DIRECTV, telling customer service representatives what is wrong so that subscribers don't have to do so. By contrast, customers with third-party smart devices would not know who to call. The customer would be left to figure out whether a particular problem concerned DIRECTV's network, the All Video Adapter, the "smart" device, or the television. If the problem turned out to be anything other than our network, we could no longer help. And the smart-device and television manufacturers would not likely help. Unlike us, they have no ongoing relationship with their customers.

## **II. THE FCC'S GOALS CAN BE ACHIEVED THROUGH INNOVATIVE ADVANCEMENTS CURRENTLY HAPPENING IN THE MARKETPLACE**

The FCC has expressed a willingness to look at alternative proposals that would achieve their goals, and we believe that one look at what is happening in the industry would show that their vision is coming to fruition. In initiating this proceeding, the FCC

seeks to (i) foster innovation, (ii) allow viewers to access Internet content on their televisions; (iii) eliminate the need for a set-top box for every television set; and (iv) allow consumers to access different video providers from the same device. These developments are occurring in the marketplace today, without government intervention. DIRECTV has already deployed millions of set-top boxes with Ethernet ports that accept Internet connections, and is beginning to deploy in-home networking capabilities that will allow its subscribers to seamlessly move content, whether from its video provider or from the Internet, around the home.

To accomplish this, DIRECTV is working with the RVU Alliance to make this technology available to its subscribers by the end of this year. The RVU Alliance is a consortium of over two dozen distributors and manufacturers, including Samsung, Cisco, DIRECTV, and Verizon that is developing an open standard technology that will enable consumer electronics manufacturers both to integrate broadband and video content on televisions and to move all of that content throughout the home using a single media center, thus eliminating the need for multiple set-top boxes. This technology also will allow television and consumer electronics manufacturers to innovate in their own offerings, without disrupting the services offered by companies like ours.

With RVU, when you turn on your television, you can be presented with a menu of video choices from various sources—for example, Netflix, Hulu, Google, and DIRECTV (or Comcast, or Verizon, *etc.*)—presented in a manner of the manufacturer's choosing. If you click on Netflix, you will get the Netflix's experience. If you click on DIRECTV, you will get the DIRECTV experience. If you click on Verizon, you will get the Verizon experience.

Chairman Genachowski made an apt comparison in his statement: “Just as a shopping mall presents customers with numerous retail outlets, smart video devices would offer viewers a single window into pay TV content and Internet content – as well as content that a viewer has already bought or archived.” RVU is that vision realized. The smart device manufacturer can determine what services are available in their “shopping mall,” but once you enter the DIRECTV store, DIRECTV can continue to provide its subscribers with the award-winning innovative services and customer service that they have come to expect from DIRECTV.

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DIRECTV is eager to work with the FCC and Congress to achieve the shared goals of innovation and broadband adoption. Thank you once again for allowing me to testify. I would be happy to take any of your questions.