

## **Exhibit to Ex Parte Filing of ivi, inc. re December 8, 2010 meeting with Jennifer Flynn**

### **The Gordian Knot of Broadcast Distribution: Three years attempting to untie the knot before cutting straight through it**

In 2005, ivi set out to create an online content distribution solution that would protect and monetize content, while making it easy for consumers to watch live television online. For two years, we worked to develop the proprietary method of encrypting a live stream while ensuring subscription payment for that content. Incorporating in 2007, we filed patents on our technologies, and created the first downloaded conditional access system (DCAS). With the DCAS technology, both linear and archived content is fully protected, time and geographically controlled, and most importantly, content owners are paid.

After the technical hurdles were overcome, we set out to acquire content by asking permission. Believing content owners would want their content fully protected and distributed to more viewers, while being paid, we approached channels about being carried on the ivi network. Instead, ivi was met with a few recurring issues: existing contractual inhibitors, the lack of access to competitive content, and the fear of cable operator retaliation.

Existing distribution contracts can be major stumbling blocks for channels that are not yet top-tier or are not diversified across distribution companies. A single binding contract with a major cable operator can prohibit channels from streaming over the Internet, on over-the-top (OTT) solutions, or by any mode other than a set-top-box. Further, the lack of online regulations makes ensuring competitive access to broadcast channels or cable owned channels impossible. Without those regulations, there is an uneven playing field in distributing those channels over the Internet.

The largest impediment to content acquisition, however, is fear of cable operator reprisal. The threat of dropping a tier for a channel, lowering a subscription rate, or adjusting terms could cripple even the largest content owners. We found we were up against nearly insurmountable odds entering the market, despite what we believed were good intentions and innovative network.

#### **The FCC as a potential ally**

The FCC assists existing licensed cable operators with both the FCC's required negotiation of retransmission consent, where the cable operator and broadcaster are obligated to work together to retransmit under a contract, and the FCC's governing rule of competitive access to cable programming, where a cable owned channel must provide fair access to that channel. A cable system distributed over the Internet, such as ivi, is not governed by the FCC. Despite repeated attempts to become classified with the FCC, ivi cannot count on the FCC's assistance in acquiring premium broadcasters or cable channels because the FCC does not regulate the Internet.

The U.S. Copyright Office is paid by 16,000 cable systems, including ivi, for a license that clearly states it is a non-infringing act to retransmit broadcast signals. That royalty payment is then dispersed to all the broadcasters whose signals were retransmitted. The

license and payment gives every cable system the right to retransmit legally, including ivi.

While the congressionally enacted U.S. Copyright Law defines ivi as a cable system and provides a license for legal retransmission, the FCC does not have a classification for ivi, due to the nature of ivi's Internet distribution. Even though ivi is in full compliance with copyright law, we don't have the same assurances and benefits as other cable companies because no category exists within the FCC to classify ivi at this time, a fact the FCC fully acknowledges.

The FCC requires that a broadcaster may not refuse to negotiate for carriage rights. The FCC additionally requires that a cable owned channel must allow all competitors to access their channel at a fair value. Again, ivi is not governed by the FCC, so broadcasters and cable operators can refuse content to ivi.

We've continued to contact hundreds of broadcasters, cable channels, and content owners directly to ask permission for carriage rights, promising to distribute and protect the content, limiting the content distribution to a geographical region, while also paying for the content. Despite great interest in our new mode of delivering content and a widespread recognition that this is the future of distribution, the exclusive language in cable operator contracts, lack of assistance from the FCC retransmission and competitive access regulations, and fear of cable operator backlash halted most of the content owners, cable channels, and broadcasters from distributing through ivi.

## **The solution**

After attempting to untie the Gordian Knot of online content distribution, we realized there was no way around the prohibitive contracts, lack of regulations, and stifling fears present in the market. So, we decided to slice straight through this knot, going to market without the assistance of the FCC. On Sept. 13, we launched with over 25 broadcast channels including ABC, NBC, CBS, Fox, and The CW, to subscribers within the US. We pay the Copyright Office for the licensed right to broadcast these channels, but we don't receive the benefit from, nor are we required to obtain, retransmission contracts for the broadcast stations under the FCC.

Within a week of launching, we predictably received cease and desist letters from the major broadcast parent companies claiming copyright infringement, demanding immediate removal of the over-the-air channels. With the legal license to retransmit, following every letter of the law, ivi filed a suit claiming copyright noninfringement, requesting a judge to tell the broadcast entities this is entirely legal. That case is still pending, and will likely go on for many years.

The troubled beginning of cable and satellite industries shows that history is on our side. The first cable companies wanted to carry broadcast channels and were refused. The cable companies then captured and retransmitted over-the-air broadcasts to subscribers, and were sued by broadcasters. That case went to the Supreme Court, which ruled that retransmitting a signal is not a performance, and is therefore not copyright infringement. Interestingly, Congress then changed the copyright law enacting a compulsory license, making it so broadcasters receive payment from the cable systems. In turn cable systems do not infringe copyright for retransmitting the broadcasters channel.

A similar story unfolded with satellite, which initially captured and retransmitted over-the-air broadcasts delivering to subscribers, claiming (as do we) that satellite is a cable system. A U.S. District Court agreed, but Congress quickly stepped in and enacted a compulsory licensing scheme for satellite. This outcome did not shut down the cable and satellite companies; instead, both new distribution means were welcomed with open arms by the viewers and remain viable today.

Meanwhile, several content owners realize competition in distribution helps their business and they are not as fearful of the major cable operators. We're adding those channels over time and continue to work with content owners and channels who embrace the future.

We're on track to be profitable within a year. By carrying premium over-the-air channels and garnering more cable channels, both of which add more subscribers, ivi is already stirring up the industry in many ways. Assuming we grow at our current pace and become a profitable online cable system, even the once fearful and restricted channels will inevitably climb aboard.

## **The future**

It is obvious that the future of television is the Internet. ivi goes many steps beyond merely distributing on the Internet--we remove the need for a cable subscription to be attached to a physical address. Paralleling the land-line to cell-phone evolution, ivi attaches a cable subscription to a device, traveling with the consumer. As a result, household subscriptions become individual family member subscriptions, as each device becomes an ivi TV player. We liken ivi to the music industry, which shifted from selling a CD bundled with multiple tracks to the iTunes model of selling each track a la carte for a dollar. Of course, the music industry first tried, unsuccessfully, to sue away consumer demand. The evolution of both the music industry and land-line based telecom industry, the consumer's desires and technological progress eventually won over industry malaise.

By answering the ills of an antiquated industry and listening to consumer's needs, we have quickly established ivi as a force that is here to stay. Adding more channels each month and a new device every few months, ivi and the idea behind it, are going to change the future of television.

Todd Weaver  
Founder and CEO  
ivi, Inc.