

October 10, 2001

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Room 8-B201
Washington, DC 20554

Re: Commercial Availability of Navigation Devices (CS Docket No. 97-80)

Dear Chairman Powell:

Over the past several years, cable operators have undertaken various measures to facilitate the retail availability of set-top boxes.

For example, CableLabs developed specifications for a separate security module (a “Point-of-Deployment” or “POD” module) as well as for the interface that a converter box needs to accommodate the POD. And cable operators purchased and stocked POD’s to provide to customers who purchase converters or other host devices that require a POD to descramble scrambled signals. CableLabs also developed a POD- Host Interface Licensing Agreement (“PHILA”) to provide manufacturers with the necessary technology to make PODs work in host devices. Despite the cable industry’s efforts, retailers have not placed orders for POD-enabled converter boxes and a retail market has been slow to develop.¹ Among the reasons retailers have given for not purchasing POD-enabled host devices is that such devices would not be technically identical to integrated converter boxes deployed by cable operators nor capable of working from one cable system to another, except where the systems use the same converter boxes.²

¹ See Response of the National Cable & Telecommunications Association to the Consumer Electronics Retailers Coalition Ex Parte Submission, CS Docket No. 97-80, filed September 21, 2001 at 3-8. See also Status Report filed by the National Cable Television Association, CS Docket No. 97-80, July 7, 2000.

² See Response of the Consumer Electronics Retailers Coalition to the July 7, 2000 Cable Industry Status Report, CS Docket No. 97-80, filed August 2, 2000 at 15 (“MSOs should rely on the same technology that they have devised for their competitors’ entry.”).

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In a further effort to facilitate the retail availability of set-top boxes and address retailers' technical concerns, the Board of Directors of NCTA has agreed to take the following voluntary actions. We believe that these actions will give consumers additional purchase options without compromising cable security.

- Operators will encourage their set-top box suppliers (Scientific-Atlanta, Motorola, Pioneer, Sony, etc.) to make available their digital set-top boxes – the same boxes with embedded security the manufacturers supply to the cable operator – at retail starting as soon as possible.
- Operators will provision and support these boxes in their systems. (To prevent theft of service, operators could require customers to provide proof of purchase from a retailer and the manufacturer's set-top box serial number.)
- If a subscriber purchases one of these boxes at retail, and then moves outside of the operator's franchise area, then the operator would buy back the box provided it is in good working condition, the operator is still leasing the same box in its franchise area, and the customer provides reasonable evidence that he or she is moving out of the franchise area. Although exact terms will be determined by individual operators, it is contemplated that buy-back would be based upon the operator's wholesale, depreciated cost.
- Manufacturers may make available to consumers some warranty period and retailers may offer some optional extended maintenance period for the boxes. Individual operators may wish to offer maintenance of these boxes as well.

With the industry's deployment of digital set-top boxes, cable operators have increasingly gained confidence about their ability to prevent unauthorized reception of services. Unfortunately, in an analog-only or hybrid analog/digital set-top environment, the theft of service opportunity is still significant and the cable industry loses an estimated \$6.5 billion/year in unrealized revenues. For this reason, the initiative to promote the sale of navigation devices at retail will apply solely to digital-only set-top boxes.

The policies adopted by the NCTA Board represent a major advance towards meeting the goals of Section 629 of the Communications Act – the “commercial availability” provision. They address retailers' major concerns about competing with set-tops leased by the operator, i.e., retailers claim that operator-leased boxes are superior to any digital box with separate security that they can sell. Under this plan, the boxes retailers may sell are identical to the boxes the cable operator leases. This plan also addresses objections to copy protection and certification terms of the CableLabs PHILA, the agreement manufacturers must sign to obtain technology

needed to make PODs work in host devices.³ Under this plan, no PHILA signature is required because there is no POD interface in the integrated boxes at issue.⁴

Finally, the plan addresses retailers' concerns that CableLabs' OpenCable specifications do not produce a "portable" set-top box, *i.e.*, one that can work on any cable system.⁵ Under the buy-back feature of NCTA's plan, customers receive "virtual portability" when they move because they are able to return a purchased box to the local cable operator for reasonable compensation.

In addition to making integrated digital set-top boxes available at retail, the cable industry is working with dispatch to develop the OpenCable Application Platform ("OCAP") or "middleware" specifications, which provide a common software environment to make set-top boxes interoperable across cable systems and allow new features to be added electronically. OCAP will enhance the portability of boxes that incorporate interactive functionality. Development of the OCAP specifications is CableLabs' highest priority.

Together the immediate retail availability of integrated set-tops and the development of OCAP specifications that will allow for actual portability should help foster the retail market envisioned by Section 629.

Sincerely,

Robert Sachs
President & CEO
National Cable & Telecommunications
Association

³ The Commission essentially endorsed inclusion of copy protection and certification requirements in such an agreement. See Further Notice of Proposed Rulemaking and Declaratory Ruling, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, 15 FCC Rcd. 18199, 18209-12 (¶¶25-32) (2000)(copy protection permitted); Report and Order, 13 FCC Rcd. 14775, 14790 at n.71 (1998)(certification by CableLabs suggested).

⁴ To the extent cable operators begin supplying boxes with POD slots, they will only be able to do so when their manufacturers have signed the PHILA or a similar agreement licensing the CableLabs decryption technology.

⁵ This claim is not quite accurate. Boxes built to the current OpenCable specification are more portable than operator-supplied boxes because the former will provide analog video and audio and both scrambled and unscrambled digital video and audio (including pay-per-view service) when used on any cable system supporting OpenCable compliant devices while current operator-supplied boxes can only be used in the system which provides the cable box to the customer.

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cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Magalie R. Salas, Secretary (for inclusion in CS Docket No. 97-80)
Marsha McBride, Chief of Staff
Susan Eid, Legal Advisor to Chairman Powell
Stacey Robinson, Legal Advisor to Commissioner Abernathy
Susanna Zwerling, Legal Advisor to Commissioner Copps
Catherine Bohigian, Legal Advisor to Commissioner Martin
Kenneth Ferree, Chief , Cable Services Bureau
Tom Horan, Legal Advisor to Chief, Cable Services Bureau
William Johnson, Deputy Chief, Cable Services Bureau
Deborah Klein, Division Chief, Consumer Protection & Competition Division, CSB
Steve Broeckert, Deputy Chief, Consumer Protection & Competition Division, CSB
Paul Gallant, Special Advisor, Cable Services Bureau
Dr. Robert Pepper, Chief, Office of Plans & Policy
Jonathan Levy, Deputy Chief Economist, Office of Plans & Policy
Amy Nathan, Senior Counsel, Office of Plans & Policy
Jonathan Wong, Division Chief, Engineering & Technical Services Division, CSB
Michael Lance, Deputy Chief, Engineering & Technical Services Division, CSB