

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

In the Matter of)
)
Compatibility Between Cable Systems and) PP Docket No. 00-67
Consumer Electronics Programming)

**REPLY TO OPPOSITION OF
CONSUMER ELECTRONICS RETAILERS COALITION**

Daniel L. Brenner
Neal M. Goldberg
Loretta P. Polk

Counsel for National Cable
Television Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036

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INTRODUCTION

The Commission initiated this proceeding to resolve one of the critical issues remaining in the process of achieving compatibility between consumer electronics equipment and cable systems: the labeling of digital television (“DTV”) sets.

The FCC’s primary goal was “to avoid consumer confusion” in making DTV set purchasing decisions and resolve the labeling debate over “how best to indicate to consumers the capability of television receivers to operate with cable television systems.”¹ Therefore, the FCC asked for comment on appropriate labels for two categories of DTV sets – those with a 1394 digital interface (“bidirectional” sets) and those without such an interface (“unidirectional” sets).² Subsequently, in adopting DTV set labels in this proceeding, the Commission adopted a label for a third category of DTV set which it essentially described as a bidirectional DTV set that had set-top functionality integrated into the DTV set.³

In its Petition for Reconsideration, NCTA argued that the Commission had not met the agency’s own objective with respect to avoiding consumer confusion.⁴ Putting aside the fact that the labels adopted by the Commission had never been subject to comment, the Commission relied upon the discredited term “cable ready” which carries a legacy of consumer confusion from the analog world. As a result, NCTA urged the Commission to reconsider its adoption of the labels “Digital Cable Ready 1,” “Digital Cable Ready 2,” and “Digital Cable Ready 3” for the three categories of DTV sets described above, and to adopt other, more descriptive labels that

¹ Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Docket No. 00-67, FCC 00-342, Report and Order, released September 15, 2000, 65 Fed. Reg. 64388 (October 27, 2000) at ¶5, ¶29 (“Report and Order”); Notice of Proposed Rulemaking in PP Docket No. 00-67, 15 FCC Rcd 8776, 8781 n. 34 (2000).

² Notice at ¶18.

³ Report and Order at ¶26.

⁴ Petition for Reconsideration, PP Docket No. 00-67, filed November 27, 2000 (“NCTA Petition”).

would ensure that consumers, when considering the purchase of a DTV set, can make informed decisions. Specifically, NCTA reiterated its support for the labels agreed upon by NCTA and the Consumer Electronics Association (“CEA”) in May 1999: “Digital TV-Cable Connect” for sets without a 1394 or equivalent interface (with appropriate disclaimer) and “Digital TV-Cable Interactive” for sets with the 1394 or other equivalent digital interface.⁵ NCTA also urged adoption of rules requiring the labels to be readily visible on the DTV set, in marketing materials and in retail store displays.

Finally, and perhaps most significantly in a proceeding whose goal is to avoid consumer confusion and misunderstanding over labels, NCTA submitted a consumer focus group study by a nationally-known opinion research organization analyzing consumer reaction to the labels adopted by the FCC and other possibilities. This is the only empirical evidence in the record submitted by anyone – including FCC staff – addressing the central issue in this proceeding.

Instead of engaging in meaningful discussion about the merits of particular labels, CERC had an unfortunate knee-jerk reaction to NCTA’s attempt to offer a constructive and pro-consumer labeling proposal. That is after all what NCTA and CEA sought to achieve through months of negotiations on labeling: to give consumers enough information to enable them to make informed buying decisions and to avoid the legacy of problems with “cable ready” terminology.⁶ The agreement reached last May achieved this result, only to be derailed by some of CERC’s own members.

⁵ NCTA Petition at 4. Alternatively, if the Commission was wedded to the use of the terms “cable ready,” NCTA urged adoption of the label “Cable Ready One Way” for the DTV set without a 1394 or equivalent digital interface and “Cable Ready Two Way” for the DTV sets with such an interface. These labels at least had the merit of describing in some measure the capabilities of those two DTV sets.

⁶ See e.g. NCTA Petition at 5 – 8.

CERC's objections appear to be three-fold. First, they assert that NCTA, in the guise of proposing labels for DTV sets, is attempting to impose "substantive" requirements on commercially-available DTV equipment in contravention of the FCC's Navigation Device Rules implementing Section 629 of the Communications Act.⁷ In this regard they ignore the fact that it was the FCC – not NCTA – that described the features and functions of the DTV sets to be labeled and it was those DTV sets (as described by the FCC) on which NCTA's labeling proposals focused.

Second, CERC contends that NCTA's criticism of the use of "cable ready" terminology (because such terminology suggests a DTV set will be able to receive all current and future cable services and does not require a set-top box) is inconsistent with cable's insistence that the industry has met its obligations under the Navigation Device Rules to develop specifications for separating security from non-security functions in navigation devices so such devices can be made commercially available. But there is no such inconsistency, and in equating "cable ready" with the capabilities of an OpenCable compliant navigation device, CERC demonstrates the very confusion NCTA fears will arise if "cable ready" labels are adopted for DTV sets which, while perhaps OpenCable compliant, might not be "cable ready" as that term is understood (or misunderstood) by consumers.

Finally, while CERC attempts to deliberately distort the findings and methodology used in the focus group study by Peter D. Hart Associates, Inc., that study shows that consumers express a strong preference for labels that help them understand the differences and distinctions among television set options. With regard to digital receivers, they reject the "cable ready"

⁷ Opposition of Consumer Electronics Retailers Coalition, PP Docket No. 00-67, filed January 3, 2001 ("CERC Petition") at 2-5.

terminology in favor of labels that spell out the key distinction between one-way and two-way capability.

I. CERC’S CONCERNS ABOUT NCTA’S LABELING PROPOSALS ARE MISPLACED

CERC’s paranoia regarding the intentions of the cable industry is well-documented in its filings in other proceedings addressing the status of the navigation devices market. And those proceedings are where its misplaced concerns about the OpenCable effort should be (and are being) addressed. This proceeding is about labeling DTV receivers – not about what features or functions navigation devices must include (nor what specifications the cable industry must develop) to satisfy FCC Navigation Device rules.

Nevertheless, CERC argues that NCTA wishes “the Commission to legislate limitations on the ultimate capability of OpenCable-reliant products, by adopting labels that would equate operation through an external (MSO-provided) set-top box as the sine qua non of interactive functionality on a digital cable system.”⁸ Elsewhere, CERC contends that NCTA has come “full circle” by “bluntly” asking the Commission to “turn this ‘labeling’ proceeding into a substantive mandate that all OpenCable-reliant DTV receivers must include the ‘1394’ interface.”⁹ In short, CERC seems to be arguing that NCTA’s labeling proposals are, in fact, requests inappropriate for a labeling proceeding because they address “substantive” obligations regarding what features and functions must be in particular navigation devices. This contention is meritless.

First, it is beyond argument that the descriptions of the features of the three categories of DTV sets which were the subject of NCTA’s Petition were proposed by the FCC, not NCTA.

⁸ CERC Opposition at 1.

⁹ Id. at 5.

NCTA merely has proposed more informative labels for the categories of DTV sets for which the FCC adopted labels.

Second, while NCTA has again proposed that all DTV receivers have a 1394/5C or functionally equivalent interface, that was the very issue which started this “labeling” proceeding. The cable industry’s goal has always been to avoid situations where unsuspecting consumers, because of confusing and misleading labeling, purchase inadequate or soon-to-be obsolete equipment. This is why the cable industry has consistently advocated incorporation of a 1394 or functionally equivalent digital interface on all DTV sets in order to provide, as the Commission itself describes it, an “insurance policy” for consumers desiring the ability to upgrade to new services.¹⁰

CEA insisted, however, that its members wanted to build a very basic, low-priced digital TV set without a 1394 or comparable digital interface. NCTA compromised and reached an agreement with CEA that if such sets were to be manufactured and sold, they should be labeled appropriately so as not to confuse consumers about the set’s capabilities.¹¹ In the face of CEA abandonment of the labeling agreement under pressure from CERC’s members, it is entirely appropriate that NCTA return to its pro-consumer position of urging that a digital interface be included on every DTV set.

But CERC gets to its real complaint when it argues that the reconsideration petitions reflect what “needs to be cured in the OpenCable specifications,” stating “[i]t is cable industry

¹⁰ Report and Order at ¶18.

¹¹ In this regard, CERC further asserts that the “entire rationale” for the NCTA/CEA agreement was to measure functionality according “to reliance on the ‘1394’ interface (for attachment of other products) rather than according to the inherent function of the labeled device itself.” CERC Opposition at 4. But that is what the FCC asked the two industries to do. It recognized, as did CEA and NCTA, that the presence or absence of a 1394 or equivalent digital interface will equate with the functionality of a DTV set.

compliance, not the labels, that needs to be reformed.”¹² CERC appears to be arguing that because, in their reconsideration petitions, NCTA and Time Warner took issue with applying a “cable ready” label to any of the three types of DTV sets at issue, that those critiques call into question the cable industry’s satisfaction of FCC navigation device requirements calling for the development of specifications to promote commercially-available navigation devices. But CERC is mixing apples and oranges.

In this regard, CERC confuses the cable industry’s obligations under the navigation devices provisions of the Communications Act with the use of the term “cable ready” in this proceeding. Section 629 directed the Commission to adopt rules to facilitate the retail sale of navigation devices used to receive cable services. The rules require the separation of security from other functions so that competitive navigation equipment may be sold at retail. To that end, cable operators – through the CableLabs OpenCable effort – were required to develop specifications for a “Point of Deployment” security module and a host interface so that manufacturers can build equipment to operate with operator-supplied security modules.

Those obligations have been met (for both unidirectional and bidirectional devices). But that does not mean such OpenCable compliant devices could meet the baggage-laden, consumer (mis)understanding of what constitutes a “cable ready” set. As the focus group study shows, consumers believe that a “cable ready” device will receive all current and future cable services and does not require a set-top box. In this labeling proceeding, the cable industry’s concern with applying the term “cable ready” to the three types of DTV sets described by the FCC is that consumers’ assumptions about what “cable ready” means will not be met by these DTV sets as defined by the FCC, regardless of whether they are OpenCable compliant.

¹² CERC Opposition at 2.

For example, the FCC adopted the “Digital Cable Ready 1” designation for DTV sets without a 1394 or equivalent digital interface, despite the fact that such a set is limited to one-way functions. That is why a “cable ready” designation is inappropriate. CERC is simply wrong in arguing that cable’s comments that such devices are not fully “cable ready” “reflect valid criticism of the CableLabs OpenCable specification, not the accuracy of the FCC label.”¹³ In fact, CERC argues that “so long as the unidirectional specification has any official standing in CS Docket 97-80 [navigation devices] it should be recognized for labeling purposes as well.”¹⁴ We agree. That is why the unidirectional DTV set, which is not fully “cable ready,” as that term is (mis)understood by consumers, should be labeled appropriately.

CERC then turns to the “Digital Cable Ready 2” DTV set (the one defined by the FCC as having a 1394/5C interface) and concludes that cable’s “real criticism [with the Digital Cable Ready 2” label] seems to be that the other label categories, as to which the labeled products would actually rely on the OpenCable specifications for their maximum functionality, are given status equal to that afforded to this category.”¹⁵ Here again, CERC gets it wrong.

NCTA’s concern with the Commission’s “Digital Cable Ready 2” label, is that, as the focus group study NCTA submitted shows, the customer expects “cable ready” to mean among other things, “no set-top box.” But the “Digital Cable Ready 2” DTV set (as defined by the FCC, not NCTA) requires a 1394 interface to accommodate a set-top box – provided either by the cable operator or at retail – in order to get all of cable’s services, particularly two-way, interactive services. Consumers will be confused and justifiably angry when they purchase a “cable ready” set and find it needs a set-top box to receive all of cable’s services.

¹³ CERC Opposition at 3.

¹⁴ Id. at 4.

¹⁵ Id.

With regard to the “Digital Cable Ready 3” DTV set label, CERC characterizes NCTA’s position as inviting the FCC to join in a “self-limiting, and self-fulfilling, prophecy” by “warn[ing]” any consumer buying a fully OpenCable-reliant product that it may not be fully functional in the future.¹⁶ But that is a simple fact of technological life. It is difficult, if not impossible, to predict the evolution of future digital services or external devices. Less than five years ago who could have predicted the impact the Internet has had on the communications industry. Technology marches on, no matter how great the desire to label an integrated DTV receiver “cable ready” once and for all.

Finally, and to put the lie to CERC’s assertions that the cable industry’s aversion to the FCC’s “cable ready” labels arises from some conspiracy to subvert the navigation device rules, NCTA, in its Petition, said it is willing to accept the use of the term “cable ready” for the unidirectional and bidirectional DTV sets so long as that term is modified with “one-way” for unidirectional sets and “two-way” or “interactive” for bidirectional sets – so that consumers would be adequately informed of the capabilities of those DTV sets.¹⁷

II. CERC MISREPRESENTS THE FINDINGS OF THE HART RESEARCH REPORT, WHICH SHOWS THAT CONSUMERS REJECT THE “DIGITAL CABLE READY” LABELS IN FAVOR OF MORE DESCRIPTIVE LABELS

Perhaps because NCTA submitted the only empirical evidence addressing the central issue (consumer preferences) in this proceeding, CERC attacks that consumer focus group research. First, CERC ignores the primary finding of the research – that consumers reject the “Digital Cable Ready” labels as inadequate and confusing descriptors of the DTV sets. The best CERC can do is try to draw attention to the secondary finding that the labels originally proposed

¹⁶ Id. at 4-5.

¹⁷ NCTA Petition at 4-5. As noted in the NCTA Petition, appropriate disclaimers and conspicuous labeling would still be required.

by NCTA are also “not good enough.”¹⁸ While it is true, as NCTA readily acknowledged, that the consumers in the focus groups did not endorse NCTA’s labels, the research unequivocally shows that the FCC’s “cable ready” labeling would be the wrong approach.

Second, CERC questions the legitimacy of the focus group survey. In particular, it asks what the participants “were actually told, what responses were given by those conducting the focus groups to consumers’ initial questions, and whether – as in the case of the purported virtues of set top boxes – any attempt was made to guide the consumer toward ‘understanding’ the utility and context for this approach to labeling.”¹⁹

These charges require little rebuttal. Peter D. Hart Research Associates is a nationally-renowned opinion research organization that has conducted thousands of focus group studies for a wide range of organizations on a wide range of topics. Its record speaks for itself. Moreover, NCTA offered to provide the tapes and full transcripts of the focus group sessions to the Commission for the public record. These tapes, transcripts and hand-outs will bear out that the presentation of the labeling issue to the focus group participants was fair and unbiased.

Finally, focus groups are a common tool in researching consumer preferences. According to Hart Research, focus group surveys are the preferred qualitative method of research when the issue is how to avoid consumer confusion in making purchasing decisions. At a minimum, such qualitative research provides some evidence of consumer attitudes and opinions. And, in this case, the Hart research is the only evidence in the record on consumer reaction to a variety of DTV labels.

¹⁸ CERC Petition at 5.

¹⁹ Id. at 6.

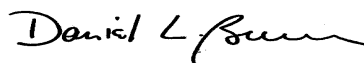
No matter how hard CERC twists the findings, it cannot deny the bottom line conclusion that consumers in the focus groups overwhelmingly reject the labels “Digital Cable Ready 1, 2 and 3” because these words provide no information on the sets’ capabilities and will only confuse and mislead consumers. CERC offers no evidence to the contrary.

CERC argues that the Hart Report supports only one conclusion: “that any label, if the sole factor considered by the consumer, would be misleading.”²⁰ It goes on to say that “consumers make their choices based on information from several sources, any one of which, if elevated to a sine qua non, has the potential to mislead.”²¹ We agree. But that leads to at least two other conclusions. Whatever labels are adopted should inform, rather than confuse, as “cable ready” labels would do. And consumers should have other sources of information – appropriate disclaimers, point-of-sale comparison charts – such as NCTA recommended in its Petition.²²

CONCLUSION

For the reasons stated above and in our reconsideration petition, the Commission should reconsider its labeling scheme for DTV receivers and adopt revised labels and other requirements as described in that Petition.

Respectfully submitted,



Daniel L. Brenner
Neal M. Goldberg
Loretta P. Polk
Counsel for National Cable
Television Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036

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²⁰ Id.

²¹ Id.

²² NCTA Petition at 4-5; 16-17. The Commission should also modify its rules which currently permit inconspicuous placement of the labels on the DTV set. DTV labels should be affixed to a prominent place on the set and in marketing and display materials where they can be readily viewable by consumers. The sample comparative features chart in the Report and Order should be displayed in marketing materials and in a prominent place in the retail showroom.