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November 29, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 97-80

Dear Ms. Dortch:

On Tuesday, November 28, 2006, Daniel L. Brenner, Senior Vice President, Law & Regulatory Policy for the National Cable & Telecommunications Association ("NCTA"), William Check, NCTA's Senior Vice President, Science & Technology, James Casserly of the law firm Willkie, Farr, & Gallagher, Paul Glist of the law firm Cole, Raywid & Braverman, and I met with Cristina Pauzé, Legal Advisor to Commissioner McDowell, and, separately, with Bruce Gottlieb, Legal Advisor to Commissioner Copps. We discussed the November 7, 2006 filing by certain consumer electronics ("CE") and IT companies addressing issues regarding two-way "plug-and-play" devices. We made the following points:

The marketplace OCAP approach developed by the cable industry and major CE companies is bringing two-way plug and play products to market now, much faster than any hypothetical approach could ever do.

- All CE companies committed to using OCAP middleware for two-way plug and play products in the negotiated Cable-CE Plug and Play Agreement submitted to the FCC in 2002.
- Over a dozen independent CE companies, including leaders in HDTV technology such as Samsung, Panasonic and LG Electronics, have signed the OCAP and CHILA licenses with the cable industry's research and development center, CableLabs, to manufacture two-way retail devices.
- Two-way OCAP plug and play products have been built by CHILA/OCAP signatories, have been exhibited at the 2006 Consumer Electronics Show, and are being tested in live trials in a number of cable operator systems.
- Major cable operators have committed to using and supporting OCAP in their own leased set-top boxes, and are beginning deployment now.

The approach submitted by competitors to CHILA signatories is not a "compromise."

- It is a proposal for perhaps the most intrusive regulatory regime ever established. It would impose substantial costs on cable customers and cable operators alike, and yet be instantly archaic for both. It would create a regulatory quagmire for the Commission, the cable and CE industries, and consumers.
- The proposal is contrary to the Commission's policy of technological and competitive neutrality by seeking to impose burdensome new requirements on cable but not on cable's DBS, telco, wireless, and Internet competitors.
- The proposal cannot be implemented in a timely manner. Even if it could, by imposing costly and highly invasive regulations exclusively on the cable industry and consumers, it would contravene Congress' directive to the Commission that, in implementing Section 629, it should "avoid actions which would have the effect of freezing or chilling the development of new technologies and services."

The CE companies who submitted the proposal want a free ride on the cable industry's multi-billion dollar investment in cable networks and services.

- Cable operators have spent billions of dollars buying programming and equipment and designing their networks to deliver state-of-the-art, rapidly-evolving interactive services to their customers.
- These cable-delivered services, such as caller ID on the TV, instant polling/voting, interactive advertising, or Time Warner Cable's Start Over service, are being deployed today.
- The proposal would force the cable industry to disassemble its services so CE companies can repackage cable's offerings as their own for viewing on their devices. This will make it impossible for consumers or operators to know what cable services a cable customer will be able to receive on a CE device and how they will be displayed.
- Consumers have the right to receive the services that a cable company has contracted to deliver and have them delivered in the manner consumers expect.

The proposal would chill innovation contrary to the mandate of Section 629.

- The proposal would freeze innovation in cable's interactive video services, including Video-on-Demand, Electronic Program Guides, interactive programming enhancements as well as emerging interactive services by subjecting them to a time-consuming, expensive and unnecessary redesign and standardization process. No innovations in OCAP would be permitted without an FCC rulemaking or permission from CE manufacturers. Cable could not roll out new interactive services without first subjecting them to testing by the CE industry. Cable operators couldn't migrate to switched video without FCC or CE industry approval.
- The proposal would enable some CE companies which are behind the curve to delay their CE competitors from delivering innovative new services. The delivery

of important new services to consumers, such as those facilitated by switched digital video (as now used by AT&T), would be delayed or not happen at all. Cable could not change existing cable services for the life of deployed legacy CE products.

- The proposal would discard the substantial investment and progress made to date by the cable industry and others on OCAP and on cable's next generation of downloadable security ("DCAS") and dictate that the cable industry and CHILA signatories shift their attention to the development of non-OCAP and other solutions dictated by self-selected CE and IT companies.
- The proposal requires a 180-degree change in course, not for the benefit of consumers, but instead to favor certain pet technologies and projects of certain CE and IT companies. Those companies have business reasons for placing obstacles in the path of CHILA signatories who are in the forefront of bringing two-way OCAP products to market. For example, OCAP is based on Sun's JAVA technology, while Microsoft and its CE partners are deploying competing Microsoft IPTV devices, and DCAS utilizes a hardware-based chip while Intel's chips use software-based security.

The proposal would jeopardize the security of the cable network in violation of Section 629(b) of the Act.

- Development of cable's downloadable security would no longer be subject to non-disclosure protections which are essential to the development of effective network security, again contrary to the congressional mandate in Section 629.
- Cable operators would be forced to use content protection technologies that have not been properly vetted for use with cable content and do not have the support of the studios and other content suppliers for cable distribution. Cable would not be able to provide a competitive service – with high-value programming consumers want – under these conditions.

For all of these reasons, we argued that the filing submitted by certain CE and IT companies will not bring two-way plug and play products to market soon (if ever), violates Section 629 of the Act, and would substitute government mandates for marketplace negotiations which are working to bring two-way products to market right now.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ Neal M. Goldberg

Neal M. Goldberg

cc: Cristina Pauzé
Bruce Gottlieb