

AMENDED DRAFT

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home and/or would cause the cable system to exceed the signal leakage limitations for TV interface devices set forth in part 15 of this chapter, the cable operator shall notify the subscriber of the problem and request that it be corrected. If the subscriber fails to correct the signal leakage problem within 90 days after such notification, the cable operator shall discontinue service to the subscriber until the problem is corrected and the subscriber so notifies the cable system operator. In cases where excessive signal leakage occurs, the cable system operator shall discontinue service to the subscriber upon notification to the subscriber.

DRAFT**THE FCC SHOULD NOT PROHIBIT CABLE OPERATORS FROM PROVIDING INTEGRATED SET TOP BOXES****1. Section 629 Does Not Authorize the FCC to Prohibit Cable System Provision of Integrated Boxes:**

- Section 629 only requires that CPE that does not jeopardize security must be made "commercially available." It does not require that the cable operator must separate out security from non-security functions in CPE it makes available to subscribers.
- Congress contemplated operator provision of integrated boxes in Section 629 by providing explicitly that FCC rules "shall not prohibit" cable operators from providing boxes as long as charges are separately stated and not subsidized by service revenues.
- In adopting the navigation devices provision, Congress cautioned the FCC "to avoid actions which could have the effect of freezing or chilling the development of new technologies and services."
- The equipment averaging provision of the same statute was adopted to facilitate "the introduction of new technology," presumably by fostering the introduction of advanced equipment such as new digital set top boxes.
- The Commission has already concluded that it is in the public interest to permit operator provision of integrated boxes in an environment where non-security boxes are made commercially available – a conclusion binding on the Commission in this proceeding. Section 629(d) requires that "[d]eterminations made or regulations prescribed by the Commission with respect to commercial availability to consumers of [navigation devices]" prior to the 1996 Act "shall fulfill the requirements of [Section 629]." In the equipment compatibility rulemaking the Commission concluded that "we see no reason to preclude cable operators from also incorporating signal access control functions in multi-function component devices that connect to the Decoder Interface connection." 11 FCC Rcd 4121, 4127(1996).

2. It is in the public interest to permit operators to provide integrated boxes.

- The Commission's determination in the Equipment Compatibility Rulemaking that it is in the public interest to permit operators to provide integrated boxes in an environment where non-security boxes are available at retail is equally applicable in this proceeding.
- While cable operators agree that separation of security from non-security functions is one way to address the retail availability issue, virtually no-one disputes the fact that security is enhanced when it is embedded in integrated boxes; Given this fact and the statutory directive that the FCC rules not jeopardize signal security, the Commission should not prohibit operators from providing integrated boxes to provide enhanced security.

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- In the near term at least, the market for advanced set tops will be limited as cable systems roll out features and functions. By encouraging subscribers to obtain advanced integrated boxes for lease from cable operators, cable operator provision of integrated boxes will both "prime the pump" for an eventual retail market for such devices and spur innovation of advanced services by cable operators who will have a base of advanced boxes able to accommodate those services. Prohibiting cable operator provision of such boxes, at least initially, will stifle such innovation.
- Any economies generated by the integration of security and non-security functions in one box should redound to the benefit of consumers. Therefore, cable operator provision of integrated boxes will benefit cost-conscious consumers who cannot afford to purchase boxes at retail (while obtaining the security module from the operator) to the extent the operator's monthly lease of such boxes is a more economical choice for the consumer. In this way, consumer resistance to the purchase of advanced equipment may be overcome to the benefit of consumers, the cable industry and the consumer electronics industry.
- Consumers who are not technologically sophisticated will also benefit from operator provision of integrated boxes because they need not overcome concerns about purchasing unnecessary equipment and can exchange such a leased box for one with more features as technology develops and/or systems are upgraded and they will not be saddled with "obsolete" boxes that cannot provide them with the full benefits of their cable systems.
- Technologically sophisticated consumers could also benefit from operator provision of integrated boxes since they could lease operator-supplied boxes until the retail market brings forth a feature-rich box to their liking, at which time they could return the leased box and purchase the retail box with no cost for the return (unlike the case if they had purchased the box).
- Consumers should not be forced to bear the burden of having the substantial investment made by cable operators in serviceable integrated boxes made obsolete by regulatory fiat.
- To take advantage of their own economies of scale and scope, retailers such as Circuit City envision integrating the non-security functions and the host interface for separate security modules into all types of consumer electronics equipment such as television sets, VCRs, DVD players, etc. Since retailers want no part of embedded security themselves, it would be inconsistent for the FCC to prohibit cable operators from providing an integrated box to take advantage of whatever economies the operators can derive from such integration.
- As long as consumers are made aware of the option to acquire non-security boxes at retail (through cable-provided information or otherwise) cable operator provision of integrated boxes will not impede the retail availability of set-top boxes since features-only boxes available at retail may offer (1) features that are not available through integrated boxes, (2) improved implementation of these features, and (3) the same features at lower cost.

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- Cable operators will not be competing in the market for sales of set-top boxes; rather they will be leasing those boxes as long as consumers demand such an option. Indeed, since cable operators will derive most of their revenues from the services they provide to consumers, they will want the demand for such services to be as high as possible. In large part, the demand for services will be a function of how many consumers have the option to obtain equipment to receive those services. Limiting the choices of the equipment to receive such services or raising the prices for such equipment, is not in the interest of the cable operator. In any event, cable operators will not have the incentive or the ability to act anti-competitively to prevent the development of a retail market for features boxes as long as operators also offer security-only modules and provide interface information so compatible features-only boxes may be built. See Besen and Gale analysis, attached to GI May 16, 1997 Comments at 17-19.

PUNT ON SET-TOPS

FCC compatibility inquiry thorny issue

The FCC, in a few weeks, plans to open another can of worms mandated by the Telecommunications Act of 1996: cable set-top compatibility.

When the '96 bill began picking up steam, lawmakers, with a bone to pick, added on measures that were near and dear to them: V-chip, closed-captioning, you name it. One was to make sure consumers would have choice among set-top converters, to buy, to lease or to take them when they moved.

The measure also was meant to address the frustration many consumers felt when a cable operator's set-top box disabled the functions of their VCRs or non-cable remote controls.

The measure on set-top compatibility was well-intentioned. There's no doubt that, in a perfect world, it would be great if consumers could take set-tops where they pleased. It also would help operators, and give consumers more choice, if set-tops could be purchased at retail. And who wouldn't want their new VCR, TV and cable box to work together seamlessly?

But this is another case where the devil is in the details. Taking these 1996 intentions and putting them into 1998 realities, under a forced time frame, puts the FCC in a no-win situation.

If the commission is already allowing for delays when top market TV stations convert to digital later this year, because the equipment isn't ready, they should do the same on the set-top issue.

Here's why:

There has been little movement in the operator and manufacturer community to make set-tops compatible this year. Instead, those two groups have put their extra energies into the DOCSIS cable modem standardization effort.

Operators and vendors are still hopeful there will be retail modem prototypes ready by Christmas.

It would be wise for government regulators to allow this unprecedented process to run its course before asking the cable community to take on set-top compatibility simultaneously.

First, the industry will learn a lot about common standards and interfaces

through DOCSIS. Those lessons can then be put to use to tackle the set-top effort in 1999 and 2000.

Second, by rushing the set-top issue, the FCC is only asking for the industry to come up with imperfect solutions that could worsen the situation.

For cable operators, security is the key issue surrounding set-top compatibility. They would love to get the set-top cost off their balance sheets, especially the higher-end more expensive set-tops.

That's the whole point to having the word "open" on the OpenCable set-top

initiative. Operators knew last year it made good business sense to have open standards with the new set-tops. That scenario would help their balance sheets and give back consumers a greater degree of control over their consumer electronics devices.

The FCC should allow cable to let this initiative run its course. It makes the most sense for operators and for consumers.

A year from now, there likely will be thousands of modems on retail shelves. Consumers will be able to buy or lease the devices. The first OpenCable set-tops, fully compatible on any U.S. cable system, will be in test markets.

This approach will ensure that consumers have access to the best technology engineers can develop over the next year, without rushing an interim solution mandated by government rules.

There's been enough frustration over the last decade or two on the CE compatibility issue. The consumer marketplace is about to get whacked with another jolt when broadcasters move to digital transmissions later this year. Who knows how consumers will react and whether they'll buy HDTV sets or lease set-top converters from broadcasters.

The FCC should seek relief from Congress on set-top compatibility and let the engineering dust settle over the next year. It can revisit the issue in 1999 with a better idea of how broadcast digital and OpenCable affect the set-top compatibility issue.



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