

feature-rich box to their liking. At that 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).

Seventh, retailers themselves intend to provide integrated equipment in ways cable operators cannot. 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.

The Order asserts that continued operator provision of integrated boxes is “likely to interfere with the statutory mandate of commercial availability” and “is an obstacle to the functioning of a fully competitive market for navigation devices by impeding consumers from switching to devices that become available through retail outlets.”⁵¹ But as Commissioner Powell points out, the statute does not require that the Commission “guarantee that retail distribution win out over operator supplied alternatives or that we tip the balance in their favor.”⁵²

Indeed, the primary purpose of the statute was “to help ensure that consumers are not forced to purchase or lease a specific, proprietary converter box . . . from the cable system . . .”⁵³ The separation of security from non-security functions addresses that concern. But prohibiting operator

⁵¹ Order at ¶69. Ironically, in the same Order, the Commission rejected similar arguments that DBS providers’ long-term service contracts be prohibited as illegal “subsidies” because they create “disincentives for subscribers to switch MVPDs.” As the Commission said in that context: “These are choices consumers are aware of, and can evaluate.” Id. at ¶91.

⁵² Powell Dissent at 1.

⁵³ Conference Report at 181.

provision of integrated boxes “interferes with market choices for equipment design.”⁵⁴ As Commissioner Powell observes: The Commission has “not been asked to ensure that consumers switch to devices that become available through retail, only that they have that choice.”⁵⁵ We agree that any “impediment” to switching to retail may be “a consumer preference for distributor-supplied integrated boxes.” As with Commissioner Powell, we “see no reason [for the Commission] to attempt to control consumer preferences.”⁵⁶

As long as consumers are made aware of the option to acquire non-security boxes at retail, 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 cable’s integrated boxes; (2) improved implementation of these features; (3) the same features at lower cost; or (4) features integrated with other attractive consumer electronics equipment.

CONCLUSION

For the reasons stated above, the Commission should grant this Petition for Expedited Reconsideration.

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⁵⁴ Powell Dissent at 2.

⁵⁵ Id. (emphasis added).

⁵⁶ Id. at 3.