Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 304	)	CS Docket No. 97-80
of the Telecommunications Act of 1996	)	
Commercial Availability of Navigation Devices	)	

COMMENTS BY THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. IN PARTIAL SUPPORT OF THE PETITION FOR RECONSIDERATION OF THE CONSUMER ELECTRONICS MANUFACTURERS ASSOCIATION AND IN PARTIAL OPPOSITION TO THE PETITIONS FOR RECONSIDERATION OF TIME WARNER ENTERTAINMENT COMPANY, L.P. AND THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

I. INTRODUCTION

For more than ten years, the Association for Maximum Service Television, Inc. ("MSTV")[1] has been a leader on digital television ("DTV") implementation issues and we have a strong interest in seeing that consumers are able to receive DTV signals and navigate among digital services easily. True commercial availability of navigation devices is a major factor in ensuring ease of reception and navigation for the viewing public. For this reason, MSTV participated in the above-captioned proceeding and urged the Commission to take steps to ensure:

1. the consumer's right to attach and use any non-interfering device to access multichannel video program distributors' services;

2. interoperability between cable system equipment and other electronic devices and nationwide portability of digital consumer premises equipment;

[1] MSTV is a national non-profit membership organization representing local television broadcast stations in regulatory, legislative, and judicial proceedings. For more than 40 years, MSTV has worked to improve the technical quality of the nation's free over-the-air television broadcast system.

3. the adoption of a standard interface (such as the IEEE 1394 interface) between the navigation device, the digital television receiver, and the digital VCR (and other devices); and

4. the separation of conditional access features from other functions in digital devices so that manufacturers can use a modular or key approach to encryption and thereby make possible cable ready DTV sets. [2]

The Report and Order in this proceeding determined that the record was incomplete with respect to some of these issues, but that the Commission would "monitor developments with respect to the compatibility of set-top boxes and digital televisions."[3] Although we do not challenge the Commission's decision to defer consideration of these digital compatibility issues, we do note one obvious shortcoming of such an approach: consumer equipment will be rolled out over the next few years that could reduce the utility of digital services and leave the consumer stranded with equipment of limited application and life expectancy. By the time the Commission steps in, it may be too late for those consumers that have invested in such

---

[2] *See* Letter from Victor Tawil, MSTV and Henry L. Baumann, National Association of Broadcasters to Chairman Kennard (June 4, 1998); *see also Ex Parte* Notice of MSTV and NAB (May 28, 1998) in CS Docket No. 97-80, *Ex Parte* Notice of MSTV (May 21, 1998) in CS Docket No. 97-80, Letter from MSTV to Chairman Kennard (September 16, 1998) in CS Docket No. 98-120.

MSTV did not file comments in the above-captioned proceeding because it was not clear from the February 1997 Notice of Proposed Rulemaking that this proceeding would deal with issues that were central to the interests of MSTV members (*i.e.*, the ability of digital television sets and other digital devices to receive DTV and related digital data). We had expected these issues to be addressed in a follow-up to *Implementation of Section 17 of the Cable Television Consumer and Protection Act of 1992*, ET Docket No. 93-7, First Report and Order, 9 FCC Rcd 1981 (1994) at ¶4 ("[S]tandards for cable digital transmissions are desirable. These standards will be needed to ensure that compatibility is maintained as new digital cable technologies are introduced....[We] will initiate a separate action on these issues as is necessary to assure continuing compatibility in the future.") *See also id.* at ¶144 (recognizing the future need to deal with "the relationship of the cable digital system to the terrestrial broadcast ATV standard and multimedia"). The Commission restated its commitment to "initiate a separate proceeding on [cable]digital standards issues in the future in its 1996 reconsideration of the compatibility issues. *See Implementation of Section 17 of the Cable Television Consumer and Protection Act of 1992,* ET Docket No. 93-7, Memorandum Opinion and Order, 11 FCC Rcd 4121 (1996) at n.9 ("[we] will initiate a separate proceeding on [cable] digital standards issues in the future."). When we learned from Commission staff that there was unlikely to be such a follow-up, at least in the near term, and that the above captioned proceeding was the one in which the Commission would examine certain of the interoperability issues of intense interest to broadcasters, we advised the Commission of our views.

[3] *In re Implementation of Section 304 of the Telecommunications Act of 1996 Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Report and Order (rel. June 24, 1998) at ¶ 115 (the "Report and Order").

equipment. The early adoptors, who are vital to the roll-out of any new technology, will be penalized and a serious disincentive to the DTV transition could be created.

One way for the Commission to reduce the likelihood of such an outcome is to send a clear signal that the standards adopted by the cable and consumer equipment manufacturing industries should be open, transparent, and reflect the consumer's interest in affordable, multi-function products. Such standards should be developed and approved by accredited standard-setting organizations that are not captive to any particular industry. We agree with the Consumer Electronics Manufacturers Association that the Report and Order's blanket endorsement of the OpenCable™ initiative[4] will not necessarily lead to open and transparent standards that work best for the consumer.[5] In this respect, we also oppose Time Warner's request that the Commission simply adopt the OpenCable™ standards in defining "cable ready" or "cable compatible" digital navigation devices.

The rapid development of a vibrant consumer market in widely compatible and portable digital navigation devices could make the difference between success and failure for DTV. Such a market could accelerate the penetration of DTV and, thus, the return of analog television channels for other uses. In this respect, the request of the CEMA Petition that the Commission require multichannel video programming distributors to cease providing navigation devices that bundle conditional access and non-security functions as of July 1, 2000 makes a great deal of sense at least for digital navigation devices. By selecting 2000, rather than 2005, as the end-date

---

[4] *See, e.g.,* Report and Order at ¶¶ 14, 76, 81, 117 and 125, in each instance expressing a reliance on the CableLabs initiative to provide the standards necessary to enable the commercial availability of navigation devices.

[5] *See* Petition For Reconsideration of the Consumer Electronics Manufacturers Association ("CEMA"), CS Docket No. 97-80 (August 14, 1998) at 11-14 (the "CEMA Petition"); *see also* Letter from Garry Shapiro, CEMA to Chairman Kennard (Sept. 10, 1998) (urging harmonization of the OpenCable™ initiative and CEMA open standard-setting efforts and expressing concern that "without the full and open participation of interested parties like broadcasters, content providers, and consumer electronics manufacturers, CableLabs may devise an overly complex and unnecessarily costly [interface] standard" between cable set-top boxes and other digital devices).

for cable-supplied integrated digital set-top boxes, the Commission would promote the variety, affordability and quality of both television equipment and service options.

II. THE FCC CANNOT DELEGATE ITS RESPONSIBILITY TO IMPLEMENT SECTION 629 TO PROPRIETARY BODIES IN LIEU OF OPEN INDUSTRY STANDARD-SETTING BODIES.

Congress and the FCC have both acknowledged that open industry standards are necessary to ensure the commercial availability of navigation devices. Section 629 of the Communications Act requires the Commission to ensure that navigation devices become commercially available by consulting "with appropriate industry standard-setting organizations".[6] In carrying out Congress' will, the Commission assumed that "commercial interests, fuelled by consumer demand, will agree on specifications for digital navigation devices to be submitted to standard-setting organizations, or that common interfaces will emerge that become widely accepted." Report and Order at ¶14. This is a reasonable assumption *only* under certain conditions. Those conditions are that all interested parties are able to participate in the necessary standard-setting in an open process.

The standard-setting process on which the Commission relies, not only in the Report and Order but in subsequent correspondence regarding digital compatibility issues in the DTV context,[7] does not satisfy the conditions that would justify the Commission's confidence in industry standard-setting. The OpenCable™ project, which is managed through Cable Television Laboratories, Inc. ("CableLabs"), reflects the work and interests of a single industry – the cable industry. Although CableLabs works with other industries to develop interoperable specifications, its cable industry members have ultimate control over what specifications are

---

[6] 47 U.S.C. §549(a).

[7] *See* Letter from Chairman Kennard to Decker Anstrom, NCTA and Gary Shapiro, CEMA (Aug. 13, 1998) (urging the completion of a standard on the IEEE 1394 interface standard in digital television sets).

presented to accredited standard-setting bodies. It is the CableLabs membership – namely, the largest MSOs – that determines draft standards for digital set-top box security modules or transmission interfaces. This membership takes into account cable's interest in maintaining control over set-top boxes and other navigation devices like electronic program guides. OpenCable™ proceeds to circulate these draft standards to "member" equipment manufacturers, who are able to comment on the draft standards individually, but not in any collective manner. OpenCable™ then takes these comments into account, but, in the end, develops standards that are designed with the cable industry's welfare paramount. By the time the standards recommended by OpenCable™ are referred to an accredited standard-setting body that is truly open, the momentum for approving the OpenCable™ standards with minimal or no change may be overwhelming. As a result, the necessary efforts to make cable-friendly standards actually consumer-friendly would be endlessly debated and might never be undertaken.

Although the OpenCable™ initiative has contributed a great deal to certain standards-development processes (*e.g.*, the separation of security and non-security functionality and the creation of transmission interfaces) in the digital environment, key interests are not represented at all in the OpenCable™ process. Broadcasters are not represented. Consumer interests are not represented (except as filtered through "member" equipment manufacturers). And equipment manufacturing interests (with the attendant focus on building a range of consumer products at various prices) are represented only at the margins. It is not enough for the Commission to monitor the roll-out of navigation devices that are based on standards developed in a largely closed process. Report and Order at ¶¶ 16, 125. As history has shown, the first-mover advantage and the long lead-time necessary to change product lines make it very difficult to change the course of consumer product markets. It is with this proceeding (and the pending

DTV proceeding) that the Commission has the opportunity to facilitate a truly competitive market in navigation devices based on open technical standards before it is too late.

III. THE COMMISSION SHOULD REJECT TIME WARNER'S PROPOSED DEFINITION OF CABLE-READY.

Evidence that the Commission's exclusive reliance on the OpenCable™ process may result in products and interoperability standards that fail to optimize the public interest can be found in the petition for reconsideration filed by the Time Warner Entertainment Company, L.P.[8] Time Warner asks the Commission to make clear that Section 76.1204(b) of its rules[9] means only that "any security modules supplied by a cable operator will plug into and accommodate the standard interface being developed for that purpose by CableLabs."[10] While we agree with Time Warner that a standard interface should be developed, we do not agree that the Commission should reduce the definition of a "commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization" to a CableLabs interface. In fact, there might be other commonly used interfaces that provide the consumer with more functionality and/or greater cost savings. Moreover, CableLabs is not a "national standards organization" since its membership is exclusive and its processes not fully open.

Time Warner has gone further in asking the Commission to take the extraordinary step of regulating the marketing of digital navigation devices so that only OpenCable™-compliant devices would be deemed "cable compatible or "cable ready." In other words, Time Warner

---

[8] *See* Petition for Reconsideration by Time Warner Entertainment Company, L.P., CS Docket No. 97-80 (August 14, 1998) (the "Time Warner Petition").

[9] This rule provides that: "Conditional access function equipment made available pursuant to [the rule requiring separation of conditional access and security features] shall be designed to connect to and function with other navigation devices available through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization."

[10] Time Warner Petition at 9.

seeks governmental recognition of a proprietary cable standard as the only standard consumers can rely on to obtain cable service through commercially available digital navigation devices.[11]

Such a government imprimatur would, in effect, undermine the entire goal of Section 629, which was to create a market for navigation devices that was not controlled by the cable industry. In defining "cable ready" pursuant to Section 624A of the Communications Act ("Consumer Electronics Equipment Compatibility"), the Commission relied on standards developed by the Electronics Industry Association.[12] The EIA standards-setting body, unlike CableLabs, is recognized by the American National Standards Institute. Unlike CableLabs, it is not a standards-setting body sponsored by representatives of the very industry that has for so long controlled the interaction between consumer equipment and cable services. It will be advisable at some point in the near future for the Commission to define "cable ready" and "cable compatible" in the digital environment. But the Commission should refrain from defining these terms in this proceeding, since the complicated interoperability questions implicated in such a definition were not squarely part of this proceeding and involve considerations far beyond the proceeding's scope.[13]

---

[11] The Time Warner Petition does not recommend a mechanism for defining "cable ready" navigation devices, but, presumably, it has in mind an amendment to Part 15 of the Commission's rules. Cable ready consumer electronics equipment is defined at 47 C.F.R. § 15.118.

[12] *See Implementation of Section 17 of the Cable Television Consumer and Protection Act of 1992*, ET Docket No. 93-7, First Report and Order, 9 FCC Rcd 1981 (1994).

[13] As Commissioner Ness has noted, there are a number of issues involved in the definition of "cable ready," having to do, for example, with whether or not the navigation device can process the full range of DTV signals, which go far beyond the scope of this proceeding. *See* Remarks of Commissioner Susan Ness Before NAB '98 "The Road to DTV" Panel, Las Vegas, Nevada (April 8, 1998) ("I worry that consumers will be confused as to what constitutes cable-ready digital television sets. Will the true high definition set that they just bought display the true high definition signal that the broadcaster has just transmitted if the set is hooked up to cable?").

The Commission should certainly and promptly deny Time Warner's suggested definition of "cable ready" or "cable compatible," which would effectively de-legitimize the work in progress of accredited standards-setting bodies.

Respectfully submitted,

THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

Victor Tawil
Senior Vice President
MSTV
1776 Massachusetts Avenue NW
Washington D.C. 20036
202-861-0344 (p)
202-861-0342 (f)

Jonathan D. Blake
Ellen P. Goodman
COVINGTON & BURLING
1201 Pennsylvania Avenue NW
Washington D.C. 20007
202-662-6000 (p)
202-662-6291 (f)

Its Attorneys

September 23, 1998

CERTIFICATE OF SERVICE

I, Ellen P. Goodman, hereby certify that copies of the foregoing document were mailed on this 23rd day of September 1998, by first-class mail, postage prepaid, to the following:

Daniel L. Brenner
Neal M. Goldberg
Loretta P. Polk
National Cable Television Association, Inc.
1724 Massachusetts Avenue, NW
Washington, D.C. 20036

George A. Hanover
Gary S. Klein
Consumer Electronics Manufacturers Association
2500 Wilson Boulevard
Arlington, Virginia 22201

Aaron I. Fleischman
Arthur H. Harding
Howard S. Shapiro
Fleischman and Walsh, L.L.P.
Attorneys for Time Warner Entertainment Company, L.P.
1400 Sixteenth Street, NW
Suite 600
Washington, D.C. 20036

Davis A. Nall
Jonathan Jacob Nadler
Squire, Sanders & Dempsey, L.L.P.
Attorneys for the Consumer Electronics Manufacturers Association
1201 Pennsylvania Avenue, NW
Post Office Box 407
Washington, D.C. 20044

Paul J. Sinderbrand
Robert D. Primosch
Wilkinson, Barker, Knauer & Quinn, LLP
Attorneys for The Wireless Communications Association International, Inc.
2300 N Street, NW
Suite 700
Washington, D.C. 20037

Grant Seiffert
Matthew J. Flanigan
Attorneys for the Telecommunications Industry Association
1300 Pennsylvania Avenue, N.W.
Suite 350
Washington, D.C. 20004

Ellen P. Goodman