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Before the
Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

COMMENTS ON PETITIONS FOR RECONSIDERATION

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September 23, 1998

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COMMENTS ON PETITIONS FOR RECONSIDERATION

The National Cable Television Association (“NCTA”) hereby submits its comments on various Petitions For Reconsideration¹ filed in the above-captioned proceeding.²

INTRODUCTION AND SUMMARY

NCTA limits these Comments to issues raised by others which are similar to issues with which we dealt in our own Petition for Expedited Reconsideration. Therefore, in this filing we comment on petitions for reconsideration addressing the Commission’s new rules on cable operator provision of “integrated” boxes and the application of its rules to analog set-top boxes. Specifically, on these issues, we support arguments made in the Time Warner and TIA Petitions for Reconsideration, oppose the CEMA Petition, support a clarification sought by WCA, but take issue with WCA’s characterization of the OpenCable™ process.

¹ The petitions were filed by the Consumer Electronics Manufacturers Association (“CEMA”); the Telecommunications Industry Association (“TIA”); Time Warner Entertainment Company, L.P. (“Time Warner”) and the Wireless Communications Association International, Inc. (“WCA”).

² Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, FCC 98-116, Report and Order, released June 24, 1998, 63 Fed. Reg. 38095 (July 15, 1998) (“Report and Order” or “Order”). Section 304 added Section 629 to the Communications Act of 1934, as amended.

Time Warner and TIA urge the Commission to reconsider and eliminate its prospective prohibition on operator provision of integrated boxes -- those that combine embedded security and non-security functions. TIA also asks the Commission to exclude analog set-top boxes from the scope of the new navigation device rules. For the reasons stated in NCTA's Petition for Expedited Reconsideration -- which raised identical issues -- we endorse these proposals. Should the Commission not eliminate the prospective prohibition on integrated boxes, the Commission should clarify that integrated boxes that have been deployed to subscribers or placed in inventory by January 1, 2005 can be provided to subscribers after that date, as requested by WCA.

We oppose CEMA's call to prohibit cable operator provision of integrated set-top boxes as of July 1, 2000 and its request that the Commission endorse the Cable Consumer Electronics Compatibility Advisory Group ("C3AG") as the body to develop standards for the separation of security from non-security functions in navigation devices. We also address WCA's suggestion that the OpenCable™ process is not truly open.

On CEMA's first point, as we have shown in our Petition, any ban on operator provision of integrated boxes at any time would be contrary to the statute and would exceed the Commission's jurisdiction. For that reason, CEMA's proposal to accelerate the effective date of that prohibition is equally flawed. Moreover, as we show herein, CEMA's reading of congressional intent, applicable FCC precedent and the "waiver" provisions of the statute -- all of which CEMA incorrectly asserts support its position -- is plainly wrong.

CEMA's proposal to substitute the C3AG for CableLabs as the focal point for developing standards to implement the separation of security from non-security functions is equally suspect. CEMA ignores the fact that CableLabs was well along in the OpenCable™ process before the

Commission implemented Section 629 and the FCC was well-advised to take advantage of that on-going process. In addition, CableLabs has an admirable record for timely standards development (unlike the C3AG experience with the decoder interface), the OpenCable™ process is inclusive and subject to review by SCTE, ITU and others (which answers the WCA suggestion that the process is not truly “open”) and, by representing the views of cable companies, CableLabs helps fulfill the statutory mandate of allowing cable companies to maintain control over their security systems. Finally, if the Commission were to substitute the C3AG for CableLabs as proposed by CEMA, the aggressive timetable set by the Commission would be delayed and responsibility for meeting those deadlines would be diffused. Moreover, the MSOs and equipment manufacturers who are on record as supporting the OpenCable™ timetable could not vouch for meeting that timetable if responsibility is shifted to the C3AG.

I. FOR THE REASONS STATED IN THE NCTA PETITION, THE COMMISSION SHOULD GRANT THE TIME WARNER AND TIA REQUESTS TO REVERSE ITS DECISION PROHIBITING OPERATOR PROVISION OF INTEGRATED BOXES AS OF JANUARY 1, 2005 AND THE TIA REQUEST TO EXEMPT ANALOG DEVICES FROM THE SCOPE OF THE NEW RULES

In NCTA’s Petition for Expedited Reconsideration, we urged the Commission to reconsider its decisions (1) to apply the rules adopted in this proceeding to analog set-top boxes³ and (2) to prohibit cable operators from providing integrated set-top boxes as of January 1, 2005.⁴ As we explained in detail, those decisions are contrary to the statute the Commission is required to implement and, in any event, will not serve the public interest. Therefore we need not elaborate on the reasons why we endorse the identical reconsideration requests by Time Warner⁵

³ NCTA Petition at 3-17.

⁴ Id. at 17-25.

⁵ Time Warner Petition at 3-9. We also support the requests for clarification in the Time Warner Petition addressing compatibility issues (id. at 9-10), intellectual property concerns (id. at 10-12), and the “right to

Footnote cont’d

and TIA⁶ that the Commission revisit and reverse its decision to phase out integrated boxes as of January 1, 2005 and the request by TIA that the Commission's rules not apply to analog devices.⁷

II. THE COMMISSION SHOULD CLARIFY THAT ITS PROHIBITION ON THE PROVISION OF INTEGRATED BOXES AS OF JANUARY 1, 2005 DOES NOT APPLY TO BOXES THAT HAVE BEEN DEPLOYED OR THAT ARE IN INVENTORY AS OF THAT DATE

WCA seeks clarification that the prohibition on operator provision of integrated boxes as of January 1, 2005 does not apply to set-top boxes that are “in inventory as of that date or are deployed prior to that date but subsequently [are] returned to inventory by virtue of subscriber churn.”⁸ While a further clarification of the scope of the integrated box prohibition would be helpful, the Commission has already answered a part of the WCA query.

As we said in our Petition,⁹ the prohibition applies only to the sale, lease or use of new integrated boxes on or after January 1, 2005, and the Commission's Order makes clear that it does not apply to “equipment which has already been placed in service by the MVPD” before January 1, 2005.¹⁰ For this reason, integrated devices which have been deployed to subscribers prior to January 1, 2005 -- even if they have subsequently been returned to inventory -- are not “new” boxes within the meaning of the integrated box prohibition and may be “redeployed” after January 2005.

attach,” (*id.* at 12-15) and its request that the Commission reconsider the decisions to exempt DBS and OVS operators from the scope of the new rules. (*id.* at 15-21).

⁶ TIA Petition at 5-7.

⁷ *Id.* at 2-5.

⁸ WCA Petition at 4.

⁹ NCTA Petition at 17-18.

¹⁰ *Id.* at 17 citing Report and Order at ¶69.

As for integrated devices that have never been deployed to subscribers but which have been placed in an operator's inventory, we agree with WCA that the prospective ban on operator provision of "new" integrated boxes -- should it be retained -- also should not apply to equipment placed in inventory as of January 1, 2005. As WCA points out, because of the potential for significant stranded investment, the financial impact of a contrary rule could be "catastrophic."¹¹ For these reasons, if the Commission retains its rule, set-top boxes acquired by operators prior to January 1, 2005 should be exempt from the integrated box prohibition through the end of their useful lives.

III. THE COMMISSION SHOULD REJECT THE CEMA DEMAND THAT IT PROHIBIT OPERATOR PROVISION OF INTEGRATED BOXES AS OF JULY 1, 2000

As we and others have noted,¹² the Commission's decision to prohibit operator provision of integrated boxes at any time, let alone by January 1, 2005, flies in the face of the statute and, for numerous reasons, is not in the public interest. Now comes CEMA to compound that error by demanding that the prohibition be effective as of July 1, 2000. CEMA's arguments are without merit and must be rejected.

At the outset, of course, the Commission must recognize the compelling reasons why any prohibition on operator provision of set-top boxes is contrary to the statute and not in the public interest. On reconsideration, NCTA, Time Warner, and TIA have explained in detail why this is the case as did other commenters in the earlier phase of this proceeding.¹³ We need not repeat those arguments which are a part of the record. Since any prohibition runs afoul of the

¹¹ WCA Petition at 5.

¹² NCTA Petition at 3-17; Time Warner Petition at 3-9; TIA Petition at 5-7.

¹³ See, e.g., Comments of General Instrument Corporation at Appendix 1 ("An Economic Analysis of the Commercial Availability of 'Navigation Devices' Used in Multichannel Video Programming Systems," Stanley M. Besen and John M. Gale, May 16, 1997 at 17-19).

statute and the public interest, CEMA's proposal to institute such a ban as soon as separate security components are available is equally flawed. Moreover, its reasons for such a proposal will not withstand scrutiny.

Congressional Intent. First, CEMA argues that permitting operator provision of integrated equipment is inconsistent with congressional intent in that it would "impede Congress' efforts to ensure that consumers realize the benefits of a competitive market for navigation devices."¹⁴ CEMA claims the Commission's decision will deter new entry by giving current operators an incentive and ability to "lock up" the market by 2005 "by developing bundled offerings that cannot be replicated by independent manufacturers."¹⁵

CEMA's version of congressional intent does not square with the statute. As we pointed out in our Petition, Section 629 does not require that cable operators must separate the security from non-security functions in equipment they make available to subscribers. The statute only requires that equipment that does not jeopardize security must be made "commercially available." Moreover, contrary to CEMA's claim, the statute makes clear that Congress contemplated operator provision of integrated boxes by mandating that the FCC "regulations shall not prohibit any multichannel video programming distributor from offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming systems, to consumers, if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such services."¹⁶

¹⁴ CEMA Petition at i.

¹⁵ Id.

¹⁶ 47 U.S.C. §549(a) (emphasis added).

The Chairman of the Senate Commerce Committee's Subcommittee on Communications, Senator Conrad Burns, a major architect of the 1996 Act, also takes issue with the CEMA view of congressional intent. As Senator Burns has said: "I do not see how the Commission could read a prohibition on an MVPD's ability to offer an integrated device to be consistent with [Section 629(a)], especially given the well-expressed security concerns set forth in the statute itself and the legislative history."¹⁷ In this regard, Section 629(b) requires that the Commission take into account means to protect signal security. The record clearly demonstrates that security embedded in integrated equipment is a more secure method of protecting intellectual property than is a separated security component. As Senator Burns indicated, prohibiting operator provision of integrated boxes -- at any time -- would be contrary to Section 629.

In addition, as we pointed out in our Petition,¹⁸ Congress' instruction that the FCC not chill development of new technologies in adopting navigation device rules¹⁹ and the inclusion of the equipment averaging provision to facilitate introduction of new technology,²⁰ both suggest that a ban on integrated boxes would contravene congressional intent. Finally, the statute provides 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]."²¹ This provision expressed congressional intent that the Commission rely upon its decisions in the Equipment Compatibility Rulemaking when

¹⁷ Letter from Senator Conrad Burns, Chairman, Senate Commerce Committee Subcommittee on Communications, to FCC Chairman William E. Kennard, June 4, 1998 at 1.

¹⁸ NCTA Petition at 19-21

¹⁹ H. R. Rep. No. 104-458, 104th Cong. 2d Sess. 181 (1996) at 181.

²⁰ 47 U.S.C. §543(a) (7) added by Section 301 of the 1996 Act.

²¹ 47 U.S.C. §549(d).

implementing Section 629. And, as we have observed, in that proceeding, the Commission made a determination that permitting operators to provide integrated equipment is in the public interest.²²

Bundled Offerings. CEMA also claims that, without an early ban on operator provision of integrated boxes, incumbent MVPDs will be able to “lock up” the market by 2005 “by developing bundled offerings that cannot be replicated by independent manufacturers.”²³ In making this argument, CEMA is blind to the fact that its members will be the ones who will “be developing bundled offerings that cannot be replicated by” MVPDs.

CEMA’s members as well as the consumer electronics retailer community intend to integrate non-security functions and the host interface for security modules into all types of consumer equipment, including television sets, VCRs, DVD players, etc.²⁴ It will be those devices which will attract consumers and which MVPDs will be unable to replicate.

Although retailers appear to want no part of embedded security, there is no reason to prohibit operators from providing integrated boxes and passing on whatever economies that can be derived from such production to consumers -- just as retailers will be doing by integrating non-security functions and the host interface with CE equipment.

Adequate Explanation. CEMA next argues that the Commission did not adequately explain why it would allow integrated boxes to be provided until January 1, 2005.²⁵ But,

²² NCTA Petition at 21 citing Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronics Equipment, ET Docket No. 93-7, Memorandum Opinion and Order, 11 FCC Rcd 4121, 4127(1996)(March 1996 decision clarifying pre-1996 Act determination)(“Equipment Compatibility Reconsideration Order”).

²³ CEMA Petition at i.

²⁴ See Letter from Robert S. Schwartz, counsel for Circuit City Stores, Inc. to Ms. Magalie R. Sales, FCC Secretary, April 2, 1998, attaching March 27, 1998 ex parte Statement.

²⁵ CEMA Petition at 6-7.

contrary to CEMA's arguments, the lack of FCC justification for the January 1, 2005 date does not require acceleration of that date. Rather, it indicates there is no justification for any prohibition on operator provision of integrated boxes.

Ironically, CEMA itself appears to recognize some of the compelling reasons for reversing the FCC's ban on operator provision of integrated equipment. As CEMA explains it:

Perhaps the most significant aspect of the Commission's Order is what it does not say. The Order does not say that the Commission is going to allow continued bundling in order to protect network security. Nor does the Order say that the Commission is going to allow continued bundling in order to promote the deployment of new or improved services. And there is no suggestion that the Commission believes that allowing continued bundling will promote innovation, avoid disruption of service, increase user choice, or otherwise benefit consumers.²⁶

All of these reasons admirably catalogued by CEMA -- and the others cited in the NCTA, Time Warner and TIA petitions -- justify eliminating the prohibition on operator provision of integrated equipment.

CEMA also contends that the "only entities for whom delay will 'minimize the impact' are cable operators ... [who] will have an additional four-and-one-half years in which to leverage their economic power in the service market to limit competition in the equipment market."²⁷

But, in fact, it is the ultimate consumer who will suffer if operators cannot provide integrated boxes and pass on efficiencies to their subscribers. As a result, even a "delay" of the ban for four and one-half years, will benefit consumers for that all-too-limited time.

Blanket Waiver. In a feat of legal legerdemain, CEMA argues that by setting a prospective ban on provision of integrated boxes, the Commission gave cable operators a

²⁶ Id. at 6 (emphasis in original).

²⁷ Id. at 7

“‘blanket waiver’ of the statutory commercial availability requirement” until 2005.²⁸ This argument falls of its own weight.

In a nutshell, the prohibition on operator provision of integrated boxes is not permitted by the statute, let alone required by it. As a result, setting a prospective effective date for the prohibition can hardly be deemed a “waiver” of the “commercial availability requirement,” as CEMA asserts, since the prohibition is not a part of the statutory requirement.

Moreover, contrary to CEMA’s suggestion,²⁹ the Commission did not conclude that the separation of security functions is required by the statute.³⁰ If separating security from non-security functions is not compelled by the statute, as the Commission apparently concluded, permitting operators to provide integrated equipment can hardly be deemed a “waiver” of the “statutory commercial availability requirement.”

The Report and Order requires the commercial availability of navigation devices by July, 2000. The cable industry is on record as agreeing to make separate security modules available for digital set-top boxes in that time frame. But, as Commissioner Powell concluded, there is “nothing in the statute that requires [the prohibition on integrated boxes] and no persuasive policy reason to interfere with the market in this way.”³¹

“Agency Precedent”/Common Carrier Regulation. Next, CEMA makes the claim that, in permitting operator provision of integrated boxes, the Commission has ignored its own precedent, particularly the Computer II decision in which the FCC required telecommunications

²⁸ Id. (emphasis added).

²⁹ Id. at 7-8.

³⁰ The Commission merely said that “the separation of security will significantly enhance the commercial availability of equipment.” Order at ¶61 (emphasis added).

³¹ Statement of Commissioner Michael K. Powell, Dissenting in Part.

common carriers to unbundle basic telecommunications service from CPE.³² As CEMA puts it, “[t]he Commission has never allowed a carrier to bundle telecommunications service and CPE, provided it also offers an unbundled version of the service. The Commission should not allow cable or other non-competitive MVPDs to do so.”³³ In making this argument CEMA itself ignores not only FCC precedent but also the statutory limits on FCC action.

First, as CEMA appears to recognize, the Computer II decision required the unbundling of telecommunications CPE from service rates, not the unbundling of various components of equipment provided to subscribers. The concern was that the incumbent local exchange carrier -- which faced no competition from alternative carriers (unlike the situation in the MVPD marketplace) -- would subsidize its CPE with its service rates to the detriment of competitive CPE suppliers as well as captive rate-payers.

Here, cable equipment is already required to be unbundled and separately priced from service rates by current rate regulation rules which will remain in effect for equipment after the March, 1999 sunset of CPS tier regulation.³⁴ Moreover, Section 629 already requires unbundling of equipment from service rates for cable operators and other MVPDs subject to the commercial availability requirement.³⁵ In addition to unbundling, that section also requires that cable equipment rates not be subsidized by service rates.

³² Amendment of Section 64.702 of the Commission's Rules and Regulations(Second Computer Inquiry), 77 FCC 2d 384, 447-49(1980), on recon. 84 FCC 2d 50, 53 (1980), further recon. 88 FCC 2d 512 (1981), aff'd sub nom. Computer & Communications Indus. Ass'n v. FCC, 693 F. 2d 198, 205 n.18 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

³³ CEMA Petition at ii (emphasis added).

³⁴ See 47 C.F.R. §76.923 (rates for equipment to be separate from rates for basic service tier).

³⁵ 47 U.S.C. §549(a).

Second, even assuming the Computer II decision had some relevance to the commercial availability requirements, application of that common carrier decision to cable operators would be barred by Section 621(c) of the Communications Act which flatly states that a “cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.”³⁶ For this reason, it should not have come as a surprise to CEMA that the Commission’s requirement “differs fundamentally from the approach that the agency took in the telephone CPE market,”³⁷ at least with respect to imposing Computer II-like requirements on cable.

Finally, to the extent the Commission ignored any precedent, it did so in adopting a ban on operator provision of integrated boxes and ignoring a much more relevant proceeding than the Computer II Inquiry. As noted above, the truly relevant precedent was the decision in the Equipment Compatibility Rulemaking where the Commission concluded that it saw “no need to preclude cable operators from also incorporating signal access control functions in multi-component devices.... Our decision ensures that subscribers will have several competitive alternatives in selecting component descrambler equipment.”³⁸ Indeed, in that proceeding, CEMA’s predecessor organization, the Consumer Electronics Group of the Electronics Industries Association, “recommend[ed] that cable systems be allowed to bundle security and non-security functions into a single box, provided that they also make available an unbundled ‘security only’ module.”³⁹

³⁶ 47 U.S.C. §541(c).

³⁷ CEMA Petition at 9.

³⁸ Equipment Compatibility Reconsideration Order, 11 FCC Rcd at 4127 (emphasis added).

³⁹ Id.

CEMA does make a point worth noting with respect to agency precedent. CEMA questions the applicability of the cases cited by the Commission in support of the phase out of “non-compliant” integrated boxes, calling them “tangentially related decisions.”⁴⁰ We also questioned the relevance of those decisions in our Petition.

We there pointed out that those cases involved the phase out of equipment that, following adoption of new FCC rules, either would become obsolete or would not work efficiently on the system for which it was intended.⁴¹ Neither of those criteria applies to the proposed phase out of integrated set-top boxes which would continue to be effective for the purpose for which they were originally intended.

Finally, CEMA’s characterization of integrated boxes as “non-compliant” equipment begs the question of whether such equipment “complies” with the statutory mandate under which the Commission must operate. As discussed below, far from requiring the prohibition of such equipment, the statute would bar such a prohibition. In short, CEMA is correct that the FCC ignored and misread precedent in adopting its ban on operator provision of integrated boxes, but the precedent it ignored and misread compels the conclusion that the prospective ban must be eliminated, not accelerated.

IV. CEMA’S PROPOSAL TO PUT THE C3AG IN CHARGE OF DEVELOPING STANDARDS FOR SEPARATION OF SECURITY FROM NON-SECURITY FUNCTIONS MUST BE REJECTED

CEMA’s Petition also asks the Commission to reconsider its reliance on CableLabs to play a leading role in developing standards for the separation of security from non-security functions in navigation devices.⁴² Claiming that “there is no established procedure to ensure that

⁴⁰ CEMA Petition at 10-11.

⁴¹ NCTA Petition at 22.

⁴² CEMA Petition at 11-14.

manufacturers' interests will receive full and fair consideration," CEMA asserts that "[g]iving CableLabs responsibility for developing standards would impede the creation of a competitive market for navigation devices."⁴³ According to CEMA, "C3AG is the appropriate group to lead the standards developments effort," given its work on the decoder interface and the National Renewable Security Standard ("NRSS").

We disagree with CEMA's characterizations of CableLabs and the C3AG. As the Commission recognized, CableLabs is indeed the appropriate focal point for developing standards to separate security from non-security functions in navigation devices.⁴⁴ This is so for a number of reasons.

Proceeding Already Ongoing. CableLabs' OpenCable™ initiative had already drafted a specification for renewable security and was in the process of circulating it for review at the time of the Commission's Navigation Device proceeding. The Commission was correct to take advantage of that ongoing process.

CableLabs' Track Record. OpenCable™ coordinator CableLabs has a proven track record for timely development of industry specifications that have been ratified by open U.S. and international standards bodies in a timely fashion. These include the ITU standard for QAM modulation for digital video transmission over a cable system (ITU-T J83 Annex B), the ITU standard for cable modems using the DOCSIS cable modem specification (ITU-T J112) and significant contribution and participation in the development of the MPEG-2 standard for digital video transmission (ISO/IEC DIS 13818).

⁴³ Id. at 13.

⁴⁴ In so doing, the Commission cautioned that the OpenCable™ process "must provide opportunity for a range of interests to participate" or else it "may be required to reevaluate [its] reliance on these private processes." Order at ¶125. This should address WCA's concern that the Commission ensure that the process is truly "open." WCA Petition at 11-13.

OpenCable™ is Inclusive. CableLabs' OpenCable™ initiative has from its inception included active participation by a wide range of consumer electronics, cable equipment and computer hardware and software companies. More than thirty companies responded to the OpenCable™ Request for Information that launched the initiative and the invitation to respond to that RFI was made publicly available on the World Wide Web. More than 200 companies have registered to participate in the OpenCable™ process including 17 members of CEMA's Board of Directors. CEMA itself sent a representative to the June 30 OpenCable™ briefing for consumer electronics companies.

The OpenCable™ Specification Is Also Reviewed by SCTE, ITU, and Others. Once the OpenCable™ specification is released to SCTE, and to ITU, it is subject to open due process review just as every proposed standard receives. At that time, the C3AG -- and anyone else -- may comment upon or offer alternatives to the OpenCable™ specification.⁴⁵

Protecting Security. In the Report and Order, the Commission specifically acknowledged the necessity of allowing cable companies to maintain control of their security systems.⁴⁶ This reflected the statutory requirement that, in adopting regulations under Section 629, the security of signals not be jeopardized.⁴⁷ CableLabs, as representative of cable companies, will ensure that this statutory mandate is met.

Timeliness. As the Commission has emphasized, timeliness is a crucial factor in setting a standard for removable digital security modules. The Commission has set an aggressive

⁴⁵ For these reasons, WCA's call for the Commission to "state unequivocally that deliberate exclusion of alternative MVPDs from the private standards-setting process will not be tolerated" is unnecessary. WCA Petition at 11-13.

⁴⁶ Order at ¶¶3 and 8.

⁴⁷ 47 U.S.C. §549(b).

schedule to achieve a standard. As noted above, OpenCable™ had a process ongoing when this proceeding began.

In contrast, the C3AG group did not have a removable digital security module specification under development at the time of the Commission's Navigation Device proceeding. (NRSS-B is a relevant effort, but requires a number of extensions and modifications to work in the cable environment). Moreover, although C3AG, with cable industry participation, developed a proposed decoder interface standard for analog equipment, the timeframe in which that was accomplished would not meet the Commission's aggressive timetable in this context.

The OpenCable™ specification for a removable security module was recently presented to the SCTE (an ANSI-approved standards organization) and is on track to be submitted to the ITU in November 1998. There is no reason for the Commission to derail this fast track effort at this late stage in the process.

Responsibility. In the Report and Order, the Commission relied "heavily" on the timetable NCTA supplied for completion of the on-going CableLabs OpenCable™ digital cable initiative.⁴⁸ Obviously, that timetable presumed that CableLabs would continue to spearhead the effort to develop specifications for separate security modules and the host interface. Similarly, the Commission required periodic reports on the progress of the OpenCable™ process from a number of multiple system operators who had made commitments relating to the availability of separate digital security modules by the dates specified in the NCTA submission.⁴⁹ Two of the

⁴⁸ Order at ¶8.

⁴⁹ Id. at ¶¶78, 81.

industry's major equipment manufacturers also indicated their support for the OpenCable™ initiative.⁵⁰

If the Commission were to shift responsibility from CableLabs' OpenCable™ process to C3AG, with the inevitable delay and diffusion of accountability that would create, the timetable submitted to the Commission by NCTA and the commitments made by MSOs and manufacturers to support that timetable would no longer be effective. Without control over the process, CableLabs, NCTA, MSOs and manufacturers could not vouch for achieving the desired result by July, 2000.

CONCLUSION

For the reasons stated above, the Commission should deny the Petition for Reconsideration filed by CEMA and take the other actions described above with respect to the issues raised in the Time Warner, TIA and WCA petitions.

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⁵⁰ Id.

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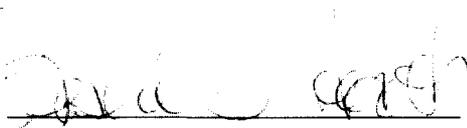
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