

application of the unbundling requirement to analog devices.<sup>75</sup> In the highly unlikely event that – after making a good faith effort – the parties conclude that there is some insurmountable technical obstacle to completing its work by the established deadline, they can request an extension.

At the same time, CEMA shares some of the apparent concern expressed by TIA regarding whether the Commission should specify technical standards to facilitate competitive availability of navigation devices. In the absence of government-imposed standards, however, this task can be performed by private industry using the voluntary standards-setting process. The Commission need not actively participate in this process unless the private process proves incapable of setting appropriate standards, a result which CEMA deems unlikely.

**C. “Practical Problems” and Concerns About Security Do Not Justify Depriving Consumers of the Benefits of a Competitive Market for Analog Set-Top Boxes.**

The Petitioners’ final contention is that “practical problems” justify an analog exemption. They contend that cost of requiring unbundling of analog set-top boxes would be prohibitively high.<sup>76</sup> They further insist that devoting resources to analog unbundling will “distract the industry” from implementing the Commission’s unbundling requirements as applied to digital devices.<sup>77</sup> Finally, petitioners argue that concerns over theft of cable make it “far too risky” to require unbundling of analog security and non-security functions.<sup>78</sup>

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<sup>75</sup> See NCTA Petition at 6 & 17 n.37.

<sup>76</sup> NCTA Petition at 9; TIA Petition at 2.

<sup>77</sup> NCTA Petition at 10.

<sup>78</sup> NCTA Petition at 8-9, *see also* TIA Petition at 4-5.

We doubt that the Commission will be persuaded. As noted above, progress made in developing the decoder interface should facilitate the unbundling of new analog devices made placed into service after July 1, 2000. If anything, creating an exemption for analog (or hybrid analog/digital) devices would slow the introduction of digital devices by creating an incentive for cable systems to continue to deploy devices with analog functionality.<sup>79</sup>

Ultimately, the Petitioners themselves provide the best justification for full application of the Commission's unbundling requirement to analog devices. "[C]urrent analog receivers deployed in U.S. homes," Time Warner observes, "have useful lives of 5-15 years."<sup>80</sup> As a result, TIA adds, the market for analog set-top devices – while in its "twilight" – "may be around for some time."<sup>81</sup> If the Commission adopts a wholesale exemption for analog set-top boxes, the vast majority of consumers will not enjoy the benefits of a competitive market for navigation devices until "well in to the next century."<sup>82</sup> Consistent with Section 629, the Commission cannot – and should not – allow this to happen.

Finally, CEMA is disappointed that NCTA, its partner in the development of the decoder interface standard, now denigrates that standard as providing only a "theoretically possible" means of separating security and non-security functions in an analog environment.<sup>83</sup> CEMA shares the Commission's view that the painstakingly-crafted decoder interface standard

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<sup>79</sup> Rather than prohibiting cable systems from bundling analog security and non-security functions in a single analog device, Time Warner asks the Commission to require that "analog tuners incorporated into all 19" or larger television screens, VCRs, and converters sold after July 1, 200 be equipped with an analog decoder interface." Time Warner Petition 6. Time Warner's proposal is nothing more than an untimely request for reconsideration of the Commission's decision in the *Cable Compatibility* docket. See *Cable Compatibility First Report and Order*, 9 FCC Rcd at 1995-96. Consequently, the Commission should decline to address it in the present proceeding.

<sup>80</sup> Time Warner Petition at 8.

<sup>81</sup> TIA Petition at 4.

<sup>82</sup> Time Warner Petition at 8.

<sup>83</sup> NCTA Petition at 11.

provides a base for industry resolution of the various technical issues raised by unbundling of analog security and non-security functions. Security need not be compromised in this process. While CEMA believes that the cable industry has legitimate concerns about theft of cable service, the Commission has addressed these concerns appropriately in Section 76.1204(d) of its rules. Alarmist incantations of the dangers of cable theft are not a basis for the blanket exclusion of analog navigation devices from the commercial availability requirements of Section 629.

### **CONCLUSION**

For the foregoing reasons, the Commission should DENY the Petitions for Reconsideration filed by NCTA, Time Warner, TIA, and WCAI. Instead the Commission should reaffirm that cable systems and other MVPDs that have market power must provide security-only navigation devices by July 1, 2000. This requirement should apply equally to digital, analog, and hybrid devices. The Commission also should prohibit cable systems and other MVPDs that have market power to cease providing navigation devices that bundle

security and non-security functionality. For the reasons set forth in CEMA's Petition for Reconsideration, this requirement should become effective on July 1, 2000 – rather than on January 1, 2005, as the Commission's rules currently provide.

Respectfully submitted,

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September 23, 1998

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 1998, a copy of The Opposition of the Consumer Electronic Manufacturers Association to Petition for Reconsideration, was mailed, first-class, to the following list:

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