

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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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
Television Consumer Protection)	
)	
Commercial Availability of)	
Navigational Devices)	

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

The Wireless Communications Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby submits its reply to the Oppositions filed in the above-captioned proceedings on September 23, 1998 by the Consumer Electronics Manufacturers Association ("CEMA"), the Information Technology Industry Council and Motorola, Inc.

As demonstrated in WCA's own Petition for Reconsideration and more recently its Opposition to CEMA's Petition for Reconsideration in this proceeding, the Commission should clarify that its January 1, 2005 "security separation" deadline will not prohibit an MVPD from redeploying any "integrated" set-top boxes that are in the field on that date but, due to subscriber churn, are thereafter returned to inventory prior to expiration of their useful lives.^{1/} WCA demonstrated that failure to do so would expose wireless cable operators to a potentially catastrophic risk of stranded inventory, and would thus violate Congress's broad directive that

^{1/} See WCA Petition for Reconsideration, CS Docket No. 97-80, at 4-5 (filed Aug. 14, 1998) [the "WCA Petition"]; WCA Partial Opposition to Petition for Reconsideration, CS Docket No. 97-80, at 2-3 (filed Sept. 23, 1998) [the "WCA Opposition"].

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the Commission “avoid actions which could have the effect of freezing or chilling the development of new technologies and services.”^{2/} Further, the clarification requested by WCA is well within the Commission’s statutory authority under Section 629 of the Telecommunications Act of 1996, in which Congress intended simply to “help ensure that consumers are not forced to purchase or lease a specific, proprietary converter box . . . from the cable system or network operator.”^{3/} Other reconsideration pleadings in the proceeding reflect support for WCA’s request.^{4/}

In its October 5, 1998 Reply to the various oppositions to its own Petition for Reconsideration, CEMA has clarified that it does not oppose an exception to the January 1, 2005 security separation deadline that would apply to MVPDs who lack market power.^{5/} Wireless cable

^{2/} H.R. Rep. 104-458, 104th Cong., 2d Sess., at 181 (1996) [the “Conference Report”]. *See also* WCA Petition at 5.

^{3/} Conference Report at 181 (emphasis added); *see also* WCA Opposition at 4-5.

^{4/} *See, e.g.*, Comments/Opposition of General Instrument Corporation in Response to Petitions for Reconsideration, CS Docket No. 97-80, at 7, n.23 (filed Sept. 23, 1998) [the “General Instrument Comments”]; Comments of Ameritech New Media, Inc. on Petitions for Reconsideration, CS Docket No. 97-80, at 7 (filed Sept. 23, 1998) [the “Ameritech Comments”]; Comments on Petitions for Reconsideration filed by the National Cable Television Association, CS Docket No. 97-80, at 4-5 (filed Sept. 23, 1998) [the “NCTA Comments”]. Indeed, even those parties ostensibly opposed to deployment of integrated set-top boxes after January 1, 2005 appear to recognize the unreasonable burden that the current rule, if not clarified, will impose on wireless cable operators. *See* Opposition to Petitions for Reconsideration filed by Circuit City Stores, Inc., CS Docket No. 97-80, at 15 n.46 (filed Sept. 23, 1998) [“WCA and NCTA raise questions as to the phaseout of devices . . . that have been in service but presently are in inventory. Circuit City believes that the Commission should interpret its *R&O* flexibly to alleviate the concerns that have been expressed.”] [the “Circuit City Opposition”]; Opposition of Tandy Corporation, CS Docket No. 97-80, at 9 n.8 (filed Sept. 23, 1998) [“The Commission should not permit MVPDs to deploy *new* in-stock integrated devices once the phase-out period ends.”] [emphasis in original].

^{5/} Reply to Oppositions to the Petition for Reconsideration of the Consumer Electronics Manufacturers Association, CS Docket No. 97-80, at 2 n.1 (filed Oct. 5, 1998).

operators would fall squarely within CEMA's proposed exception, and thus WCA once again urges the Commission to clarify its rules to allow wireless cable operators to redeploy integrated boxes as requested in WCA's Petition.

Finally, WCA notes that a number of parties in this proceeding have asked the Commission not to apply its security separation to analog set-top boxes.^{6/} CEMA and others oppose this request.^{7/} For the reasons set forth in the filings of those who support an exemption for analog set-top boxes, WCA agrees that mandatory separation of security from nonsecurity functions in analog set-top boxes exposes MVPDs to an unreasonable risk of signal theft and is otherwise inconsistent with the objectives of Section 629 as described by Congress. WCA wishes to add, however, that the issue of signal theft is of particular concern to those wireless cable operators in rural areas who, due to their smaller base of subscribers, may not be converting to the digital mode of operation in the near term. To the extent that security separation in the analog context will be harmful to large cable MSOs, it will be even more so with respect to those smaller wireless cable operators who can ill afford economic losses attributable to signal theft.

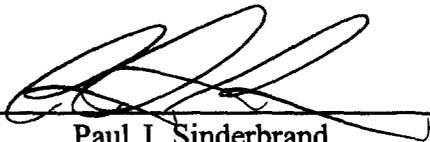
^{6/} See NCTA Comments at 3-4; Petition for Reconsideration filed by Time Warner, Inc., CS Docket No. 97-80, at 3-9 (filed August 14, 1998); Petition for Reconsideration filed by Telecommunications the Telecommunications Industry Association, CS Docket No. 97-80, at 5-7 (filed Aug. 14, 1998); Comments of Echelon Corporation on Petitions for Reconsideration, CS Docket No. 97-80, at 4-17 (filed Sept. 23, 1998); Ameritech Petition at 2-5; General Instrument Comments at 2-7.

^{7/} See Opposition of the Consumer Electronics Manufacturers Association to petitions for Reconsideration, CS Docket No. 97-80, at 17-20 (filed Sept. 23, 1998); Opposition of the Information Technology Council to Petitions for Reconsideration, CS Docket No. 97-80, at 7-10 (filed Sept. 23, 1998); Opposition of Motorola, Inc., CS Docket No. 97-80, at 2 (filed Sept. 23, 1998).

WHEREFORE, for the reasons set forth above and in WCA's prior filings, WCA requests that the Commission grant WCA's Petition in accordance with the recommendations set forth in that filing.

Respectfully submitted,

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