

June 8, 2000

JUN 8 2000

VIA COURIER

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: *In the Matter of Compatibility Between Cable Systems
and Consumer Electronics Equipment,
PP Docket No. 00-67*

Dear Ms. Salas:

On behalf of the Consumer Electronics Association, I am submitting an original and nine copies of the attached "Reply Comments of the Consumer Electronics Association" in the above-captioned proceeding. Please kindly stamp the additional copy with an FCC stamp confirming receipt. Should you have any questions about this filing, please do not hesitate to contact the undersigned.

Sincerely,



Benigno E. Bartolome

Counsel for the Consumer Electronics Association

Enclosures

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

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In the Matter of)
)
Compatibility Between Cable)
Systems and Consumer)
Electronics Equipment)

PP Docket No. 00-67 /

To: The Commission

**REPLY COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

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**REPLY COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

The Consumer Electronics Association (“CEA”), by its attorneys and pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, hereby respectfully submits its reply comments in the above-captioned Notice of Proposed Rulemaking (“NPRM”).¹

I. INTRODUCTION AND SUMMARY

As reflected in its initial comments, and shared by many other commenters in this proceeding, CEA believes that the resolution of remaining public policy and technology issues must not be permitted to slow the transition from analog to digital television (“DTV”). The consumer electronics industry has worked for more than a decade now to bring DTV technology to consumers. DTV products are in the marketplace and sales continue to be strong, and significant progress has been made in resolving cable-consumer electronics compatibility issues

¹ See *In the Matter of Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67, Notice of Proposed Rulemaking, FCC 00-137 (rel. April 14, 2000) (“NPRM”).

with the National Cable Television Association (“NCTA”) and other industry parties. CEA firmly believes that it is essential to quickly resolve the remaining technical issues, so that full delivery of DTV capabilities are not delayed to consumers. In this regard, CEA and NCTA recently reached an initial accord regarding appropriate labeling of DTV receivers and also with respect to the question of whether or not all digital television sets should have a 1394/5C connector. Further work will be needed to define other connections for receivers in the future. This agreement attempts to resolve at least one of two major issues raised in the NPRM. The other remaining issue concerns licensing terms for copy protection technology. CEA, however, believes that the complete resolution of copy protection issues, while important, should not be used as a reason to delay the deployment of DTV receivers and programming to consumers.

On May 24, 2000, CEA and NCTA submitted to the Commission a voluntary agreement on labeling information for integrated DTV sets that will aid consumers in their purchase of this category of new digital television equipment.² A voluntary labeling agreement regarding digital set-top boxes is yet to be negotiated. While the voluntary labeling agreement notes that CEA and NCTA will work to “define labeling of other digital equipment, *more specifically digital set-top boxes* which will work with the ‘Digital TV-Cable Interactive’ DTV sets,”³ the Commission should note that the agreement in no way limits the nature of devices, including current analog set-top boxes, which should be labeled. The existing CEA-NCTA agreement is a first step towards establishing the labeling to be used to inform consumers about the capabilities of various

² Joint letter from Gary Shapiro, President and CEO of the Consumer Electronics Association, and Robert Sachs, President and CEO of the National Cable Television Association, to Chairman William E. Kennard, filed in PP Docket No. 00-67 (dated May 24, 2000) (hereinafter “*DTV Set Labeling Agreement*”).

³ *Id.* at 1 (emphasis added).

digital television sets to receive digital and interactive digital television services.⁴ Under the agreement, two categories of cable-compatible DTV sets are recognized. Digital TV sets possessing a 1394/5C connector will be labeled “Digital TV-Cable Interactive.” Digital sets without this connector, but which are equipped with a point-of-deployment (“POD”) interface and otherwise conform to OpenCable technical specifications, will be labeled “Digital TV-Cable Connect.” The agreement thus acknowledges that all DTV sets *need not* have a 1394/5C connector, but that appropriate labeling should be used for sets both with and without that connector, and anticipates that set-top box labeling will also be addressed. Further, all sets, and we expect set-top boxes, will be packaged with consumer information describing the features and functions of each, with and without a 1394/5C connector.⁵ The description information will appear in product manuals and brochures and in cable systems information.

⁴ CEA recognizes that DBS providers, such as EchoStar, are concerned about the implications of the labeling agreement on satellite equipment. *See* EchoStar Comments at 3-4; *see also* Satellite Broadcasting and Communications Association Comments at 2-3. Additionally, they seek to ensure that any agreement between CEA and NCTA does not inhibit the connection of satellite equipment to digital television receivers or otherwise indicate to consumers that satellite equipment cannot also be connected to such equipment. CEA views these issues as important and will work with the DBS industry to establish appropriate labeling standards with respect to satellite equipment and to resolve any compatibility concerns.

⁵ Sets labeled “Digital TV-Cable Connect” – those without the 1394/5C connector – will be capable of receiving analog basic, digital basic and digital premium cable programming by direct connection to a cable system providing digital programming. A security card provided by the subscriber’s cable company will be required to view encrypted programming. “Digital TV-Cable Interactive” sets – those with the 1394/5C connector – will be able to receive those services, as well as other advanced and interactive digital services, such as impulse pay-per-view, video-on-demand, enhanced program guides and data enhanced television services, with either a proprietary digital set-top box supplied by the cable operator for now, or a “retail set-top” as envisioned in the FCC’s Navigation Devices Rules, in the near future. CEA and NCTA have agreed to continue discussions and expect to reach an agreement on the labeling of set-top boxes. *See* “DTV Set Labeling and Descriptions” attached to *DTV Set Labeling Agreement*.

The voluntary agreement of May 24 must be recognized for what it is: an initial step, based on convenience and compromise, in what will be a continuing process that will seek to define the labeling of new products and services as standards are established. The purpose of this process is to enable manufacturers, distributors, and retailers to communicate to consumers the respective capabilities of digital consumer electronics (“CE”) products, while allowing cable operators to roll-out new enhanced and interactive services, with identified compatible CE devices, that conform to current or yet-to-be-established standards that will specify how those services will be delivered. CEA fully expects that the labels proposed in the May 24 agreement will evolve, as will the understanding as to how such labels should be applied. As such, the labels set forth in that agreement are not “set in stone,” and certainly are not the basis for any labeling requirements to be imposed by Commission rule, but instead represent a good faith effort by CEA and NCTA to start the process of categorizing products and how they will work with cable services, both of which continue to evolve.

Much of the concern over the labeling agreement of which CEA is aware centers around the inclusion of the 1394/5C connector in the “Digital TV-Cable Interactive” description. As CEA fully recognized in its initial comments, the 1394/5C connector is not synonymous with “interactive”; an integrated DTV receiver (that is, with the two-way and other capabilities of an “advanced set-top box” built in, and therefore, without a 1394/5C interface) can deliver the full measure of interactivity, *provided that there are open standards describing how such interactive features are to be delivered*. In the current environment, these standards do not exist.⁶ Instead, the delivery of such services will be dominated in the near term by proprietary technologies

⁶ See Circuit City Comments at 2-4, 9-10 (detailing delays in OpenCable specifications process).

based on operator-supplied set-top boxes. The proposed “Digital TV-Cable Interactive” label addresses this reality. CEA expects that DTV sets that will bear this label in the future will also be capable of direct connection to cable systems and will have a POD interface (thus increasing consumers options for how the set will be used), but that the 1394/5C interface will enable connection to proprietary set-top boxes that may not necessarily conform to OpenCable specifications. CEA sets forth below the context for inclusion of the 1394/5C connector in the description of this voluntary proposed label.

Under current regulatory and market circumstances, the cable multiple system operators (“MSOs”) lack the incentive to unbundle expeditiously new features and functions from their current base of integrated set-top boxes, and possess strong incentives to entrench that base among cable subscribers with new generations of proprietary devices. The cable industry has thus seized on a popular, effective, and thoroughly standardized 1394 interface to effect *box-to-box* connectivity that will allow the consumer’s digital television receiver to be used as a monitor for cable services that are accessed and controlled entirely within the set-top box. Changing the market reality that led CEA and its members to this compromise requires the Commission to take effective action to change the incentives of the cable industry as to how enhanced and interactive services will be delivered. For this reason, CEA fully supports the position of Circuit City that the termination date for cable operator deployment of non-conforming, integrated navigation devices be advanced to January 1, 2002.⁷ With this action, the Commission will not only take a great step in advancing cable-consumer electronics compatibility, but also spearhead the

⁷ *Id.* at 19-20.

development of a fully competitive market for all forms of equipment that connect to cable systems.⁸

Furthermore, contrary to the concerns expressed to CEA by some parties, there is no intent expressed in a “Disclaimer” to be included in manufacturers’ literature on products labeled “Digital TV – Cable Connect” that all high-definition programming must be delivered via a 1394/5C interface. The Disclaimer is merely intended to recognize that some cable operators may deliver high definition transmissions only through certain kinds of set-top boxes that could then connect to DTV sets via a 1394/5C connector. The Disclaimer statement must be interpreted and qualified by the February 22, 2000 Technical Agreement between CEA and NCTA,⁹ which clearly demonstrates the desire of the parties to ensure that all video programming, including high definition content, be available for direct carriage into the TV receiver from the cable system, that is, in the “Digital Television-Cable Connect” set. For these purposes, it was the intention of the technical agreement that directly connected receivers would thus bypass the need for a set-top box or 1394 interface connector, and bypass the need for security beyond conditional access, since the cable wire itself and TV receiver make a closed, fully protected system with use of a POD interface/module supporting the cable system’s particular conditional access system. Moreover, the voluntary Disclaimer is not absolute: the

⁸ The Commission’s recent victory in the D.C. Circuit upholding the navigation devices rules should remove any hesitancy as to the legal ability of the Commission to move the phase-out date forward. *See General Instrument Corp v. FCC*, No. 98-1420, 2000 U.S. App. LEXIS 12212 (D.C. Cir. June 6, 2000). CEA suggests that the Commission act expeditiously through the rapid issuance of a further notice of proposed rulemaking in the navigation devices proceeding that can be carried forward to a quick conclusion advancing this important date.

⁹ *See* Letter from Gary Shapiro, President and CEO of CEA, and Robert Sachs, President and CEO of NCTA, to William Kennard, FCC Chairman (Feb. 22, 2000).

word “may” is used twice in descriptions of how a “Digital TV – Cable Connect” set may be limited in providing all cable services. Individual manufacturers will make decisions based on the specific capabilities of their products, and the analysis of their own legal counsel, as to what disclaimers are necessary and appropriate. It would be inappropriate for the Commission to mandate any disclaimer on labeled products.

Moreover, the Commission should recognize that the labeling agreement represents a voluntary accord, and like all such voluntary agreements, individual companies may choose to employ the use of these terms on their own discretion. If the Commission should decide to require the use of such labels on products connected to a cable system, including PCs with DTV reception and display capabilities – an action CEA neither supports nor advocates – then additional interested parties should be provided the opportunity to comment and suggest changes to these voluntary definitions. CEA would also welcome the input of additional parties in further discussions to reach additional or amended voluntary labeling agreements. In particular, CEA and its members are aware of the concerns of consumer electronics retailers, who deal directly with consumers and thus have a unique perspective on the utility of specific labels. CEA believes that inclusion of retailers with manufacturers and cable operators in tripartite discussions on labeling issues have the potential to yield subsequent agreements that would be fully acceptable to all affected parties.

While significant progress has been made in resolving outstanding compatibility issues under current circumstances, as evidenced in the February 22, 2000 CEA-NCTA agreement and the more recent May 24, 2000 CEA-NCTA agreement, other issues remain. CEA, however, will continue in its efforts to work with industry stakeholders to resolve outstanding cable-consumer electronics compatibility issues. Discussions between cable and CE industries have always

contemplated a future for products supporting interactivity. In particular, we are anxious to continue to work with NCTA to create open standards required for the direct connection to cable systems by receivers that possess full two-way data transmission and reception capability, and which support advanced and interactive services without the need for any set-top box. It has always been a CEA policy to support open standards that enable consumer-friendly products, such as full function digital receivers that will work directly with cable services. Towards this end, the CEA Cable Compatibility Committee (R-8) has initiated work on standards for two-way operation. Despite its ongoing efforts, CEA understands that the Commission may very well have a need to intervene in order to ensure that DTV implementation is not further delayed. Additionally, even if the issues laid out in the NPRM are resolved through industry agreement, CEA believes that continued Commission review and oversight still will be necessary to facilitate resolution of a host of issues posed by problems of cable compatibility and the successful implementation of the navigation devices rules.

As discussed below, CEA urges the Commission to reject the insistence of some commenters, such as NCTA, that all digital televisions sets should be required to have a 1394/5C connector. An IEEE 1394 interface is not necessary to receive DTV programming or interactive services over cable televisions systems. Additionally, mandating the inclusion of this interface might allow the cable industry to avoid open standards processes and thwart the Commission's goal of an open retail market for products and services. The Commission should also ensure that any technical standards intended to provide copy protection must strike a balance between the desire to protect content and the need to preserve reasonable and customary recording practices, as opposed to imposing legal restrictions – as content providers recommend -- that are onerous to consumers and manufacturers. From the Commission's perspective on this controversy, CEA

believes that the core issues are not those of copyright, but of navigation device functionality and cable operator's control over such.

II. DISCUSSION

In its initial comments in this proceeding, CEA urged that any Commission action on the labeling issue should be consistent with previous Commission decisions on labeling in the analog context.¹⁰ CEA stated that while many manufacturers will provide products that support IEEE-1394-based interfaces, the Commission must recognize that the functionality of such interfaces is to ensure compatibility of receivers with *set-top boxes*, *not* to ensure compatibility of receivers with cable systems. On the copy protection issue, CEA urged that any Commission action on this issue be consistent with the Commission's Navigation Devices Rules, specifically Section 76.1204(c), which proscribes any effort by cable operators to preclude, "by contract, agreement, patent, intellectual property right or otherwise," any equipment features that are not related to conditional access or protection against cable theft.¹¹ CEA explained that cable security and content copy protection are not synonymous in all aspects, and that the Commission, therefore, should act to curb overreaching efforts to force unreasonable copy protection requirements into licensing arrangements covering conditional access arrangements.

CEA also discussed its constructive, ongoing partnership with NCTA on DTV cable compatibility issues. At the same time, however, CEA noted that there exist additional concerns relevant to cable-consumer electronics compatibility which the NPRM does not address, but which CEA urged the Commission to consider. These additional concerns, which are fully set

¹⁰ See generally CEA Comments in PP Docket No. 00-67 (filed May 24, 2000).

¹¹ 47 C.F.R. § 76.1204(c).

out in CEA's comments, relate to: electronic program guides; DTV closed-captioning; standards to ensure nation-wide portability of cable-compatible DTV receivers and other navigation devices; the need to continue to define standards for future services; the need to transmit over-the-air broadcasts and basic cable programming "in the clear"; the need for cable operators to rapidly upgrade head-ends for their systems to ensure compatibility with POD modular security systems; the need for the Commission to move up the phase-out date for deployment of operator-supplied navigation devices with embedded security to a date much earlier than the current requirement of January 1, 2005; and the need to define further labeling for future products and services.¹²

Below, CEA addresses two issues on which it disagrees with cable operators and content providers. The first concerns whether an IEEE 1394 set-top box interface should be included on every DTV set, and the second concerns the appropriate resolution of licensing terms for use of copy protection technology. At the outset, the Commission must recognize that there can, and will be, a variety of interfaces and copy protection technologies available. CEA urges the Commission to ensure that fair outcomes are achieved through any negotiations.

A. An IEEE 1394 Interface is Not Necessary to Receive DTV Programming or Interactive Services Over Cable Television Systems and, Therefore, Should Not Be Required for All DTV Receivers.

Despite the recent understanding reached by CEA with NCTA on the labeling issue, CEA remains concerned over NCTA's insistence, in its comments in this proceeding, that all digital television sets should have a 1394/5C connector.¹³ NCTA states that the reason for its insistence

¹² See CEA Comments at iii-iv.

¹³ See NCTA Comments at 7-11. See also NAB/AMST Comments at 6-10 (urging the FCC to mandate IEEE 1394 for all DTV sets and set-top boxes).

on requiring a 1394 interface is to enable cable subscribers to receive any two-way services operators provide in the future, which it assumes all subscribers will want. Not surprisingly, Time Warner, a cable operator, supports NCTA's view on this issue.¹⁴ CEA, however, urges the Commission to reject any proposal by any party, such as NCTA and Time Warner, to require all DTV sets to have a 1394 interface. The use of the 1394 interface, like other receiver features and functions, should not be mandated but rather driven by market demand.

First, as NCTA readily admits, consumer electronics manufacturers are free to build sets with or without 1394 connectors.¹⁵ Second, NCTA assumes that all subscribers will want, and are willing to pay for, the interactive features that it hopes will become available in the future. As CEA noted in its initial comments, "it does not make sense to include a 1394 set-top box interface on every DTV set, since more than 50% of consumers today prefer to attach their cable service directly to the set without a box."¹⁶ Third, a 1394 interface on a receiver is not essential for interactivity or two-way cable services.¹⁷ The interface merely provides a means, one of many possible, to connect a set-top box to the receiver and to use the receiver essentially as a monitor. In fact, any interactive features that the receiver might possess, including its navigation and remote control functions, will no longer be operative if the input is supplied through the 1394 interface. Fourth, NCTA's request would inappropriately inhibit the ability of set

¹⁴ See Time Warner Comments at 15-17. *Accord* Joint Comments of the National Association of Broadcasters and the Association for Maximum Service Television at 7-10.

¹⁵ See NCTA Comments at 11. See also *NPRM* at ¶ 18.

¹⁶ CEA Comments at 11.

¹⁷ See *id.* at 10. See also Philips Electronics Comments at 5-6; Thomson Consumer Electronics Comments at 5-6.

manufacturers to build interactive-capable receivers, which do not rely on an interface, but rather can be connected directly to the cable system. The Commission should note that not only digital but also existing analog set-top boxes with integrated security are able to access a variety of interactive services by ordering via telephone, and which do not require a 1394 interface. Importantly, this is exactly what the cable industry first asked CE manufacturers to support early last year, as detailed negotiations proceeded toward the technical agreements which were announced in February 2000. Indeed, the telephone call-in will be the mechanism that persists for some time in the analog-STB-equipped and analog TV “cable-ready” homes. Once the specifications for more advanced interactive services are standardized, there is no reason why these capabilities cannot be provided in consumer electronics products, therefore obviating the need for a set-top box.

Surrendering to NCTA’s request will only permit cable operators to continue to pursue a digital strategy based on “captive” set-top boxes utilizing proprietary technologies rather than to create incentives for them to pursue a collaborative course to develop open standards that will promote full compatibility for integrated DTV receivers. In fact, a mandatory 1394 interface might also allow the cable industry to avoid the consumer-friendly open standards processes entirely and thwart the FCC’s goal of an open retail market for set-top boxes and for other products and services. It also will result in consumers paying more for every DTV set in order to get features that they may not want or use, while at the same time paying for basic features (tuning and navigation) in the receiver that they will not be able to use when connected to a set-top box. CEA believes that enshrining 1394 or any other interface as a necessary interface would be a serious mistake, because it will be detrimental to competition and consumer choice.

IEEE 1394 is but one of a number of technical solutions to cable compatibility issues.¹⁸ While CEA does not endorse any particular interface, such as IEEE 1394, DVI, or component video, it believes that any preferential selection of interfaces and technologies should be based on marketplace choices made by consumers, rather than on plans imposed by the entertainment, distribution or other industries.¹⁹ As the Digital Transmission License Administrator (“DTLA”) appropriately states in its comments in this proceeding, “the availability of a copy protected 1394 interface should not be used as an occasion or excuse to deny to consumers the availability of other interfaces on which they now rely, or which they might reasonably choose in the future.”²⁰

B. Any Technical Standards Intended to Provide Copy Protection Must Strike a Balance Between the Desire to Protect Content and the Need to Ensure That Reasonable and Customary Consumer Recording Practices Are Preserved.

Not surprisingly, the Motion Picture Association of America (“MPAA”), the broadcast networks, and the cable networks (all content providers) share the same or similar views on the issue of copyright protection, and many of these commenters urge the Commission to impose rules to protect their works from unlawful piracy.²¹ The Commission must recognize that, in a digital environment, there is no “fool-proof” technical solution that will prevent unauthorized

¹⁸ See CEA Comments at 12 n.17 (describing several interface connectors available). See also Circuit City Comments at 5-8 (argues that “making the 1394 interface mandatory or essential or giving it favored status would harm competition and consumers dramatically”).

¹⁹ See DTLA Comments at 8.

²⁰ *Id.* at 9.

²¹ See Comments of MPAA; MGM Studios; Viacom; Broadcast Networks Joint Filing (ABC, CBS, Fox, and NBC); Cable Networks Joint Filing (Turner, HBO, Disney, Fox Cable, and MTV); Fox Entertainment Group; News Corporation (on behalf of ABC, CBS, Fox, and NBC).

copying of copyrighted materials. Despite the considerable efforts of manufacturers and software producers, even the best protection mechanisms are subject to “hacking.” The entire roll-out of digital television, however, should not be allowed to be held hostage by a small group of malefactors. Rather, the Commission should recognize that the interests of all stakeholders in reasonable copy protection measures are advanced by an on-going process of discussion and development of new and consumer-friendly copy protection techniques that can be assimilated by all the affected industries.

Additionally, the Commission should recognize that the overwhelming majority of consumers are not engaged, nor are likely to be engaged, in the illegal reproduction of copyrighted programming for commercial distribution. Effective law enforcement is the appropriate remedy to deal with the relative handful of individuals who engage in unlawful piracy. Copyright laws already exist to protect content providers’ rights, and certain rules that content providers recommend will only place undue burdens on consumers and equipment manufacturers. The Commission, instead, should facilitate a voluntary, multi-industry agreement on copy protection issues and reserve the ability to review the propriety of license agreements, which it can do, given its regulatory authority over cable operators and broadcasters. It would simply be unfair to impose copy protection requirements that threaten consumers’ normal and customary recording practices or burden manufacturers unnecessarily.

While CEA’s members are willing to adopt certain copy protection technologies, CEA disagrees with some commenters who contend that various legal restrictions should be imposed in order to prevent unauthorized copying of programming. CEA recommends that all affected parties endeavor to achieve license agreements that adequately protect content while still preserving consumer rights to enjoy and make fair use of content to which they have lawfully

gained access.²² Additionally, any licensing requirements for copy protection must be reasonable and not onerous to consumers and manufacturers. As evidenced in their comments, content providers attempt to seek an unreasonable result on these issues, which CEA urges the Commission to reject. Furthermore, the Commission must not be manipulated into thinking that all copy protection issues must first be resolved before DTV programs over cable systems can be made available to the public.²³

CEA strongly disagrees with the request by some content providers that all DTV programming be encrypted.²⁴ CEA additionally finds some of the recommended licensing requirements proposed by various content providers to be unreasonable and anti-consumer. CEA maintains that cable industry technology licenses containing copy protection requirements must not be used to influence other features and functions of consumer equipment, nor should they unnecessarily disadvantage licensees in their ability to provide products that meet consumers' expectations for display and home recording of video programming. As CEA noted in its comments, CEA and its members have addressed the issue of copy protection through an attitude

²² *Accord* Home Recording Rights Coalition Comments at ii (asking the FCC not to approve any license that implements “the unprecedented copy control power that comes with digital encryption without also approving balanced ‘recording rules’ that protect consumers’ reasonable and customary practices.”); Information Technology Industry Council Comments at 5 (states that copying or recording be restricted to “reasonable terms”).

²³ CEA fears that this issue might be used by some industry parties to delay the full deployment of DTV. Accordingly, CEA would agree with DTLA’s suggestion that “an interim DFAST license which does not include any controversial copy protection rules should be offered to companies to allow them to begin the manufacturing process, pending negotiations towards an overall solution to the outstanding copy protection issues.” DTLA Comments at 10.

²⁴ *See, e.g.*, MPAA Comments at 6-7; Viacom Comments at 4-5 (urging the Commission to “protect all digital content from unauthorized reproduction and distribution, [and] to permit the scrambling of digital channels on the basic tier.”).

of accommodation and a willingness to negotiate, but consensus remains elusive.²⁵ CEA, therefore, urges the Commission to use the full extent of its authority over cable operators and broadcasters – industries over which the Commission has regulatory oversight – to ensure that mutually satisfactory agreements are reached that contain rational, consumer-friendly copy protection procedures (*i.e.*, basic encoding and compliance rules).

In this regard, CEA finds the attitude of cable operators, expressed in the comments of NCTA, to be simply disingenuous. NCTA states that the cable industry “has done its part” in resolving this controversy by “providing copy protection assurances to the content community so that the flow of high-quality digital programming can begin.”²⁶ The cable industry gave these assurances, according to NCTA, because it “recognized that digital material passing over the 1394 interface between digital set-top boxes and DTV sets had to be protected.”²⁷ Moreover,

²⁵ DTLA points out in its comments that efforts to establish reasonable arrangements for broad deployment of its “5C” copy protection technology have been thwarted by the MPAA, CableLabs, and the NCTA in disagreements over:

rules defining the circumstances under which broadcast television and other video programming may be recorded by consumers (the “encoding rules”); requests by the MPAA that 5C require its licensees to obey the compliance rules contained in the license even with respect to content that has not yet entered the DTCP-protected interface; requests by the MPAA that DTLA require all unprotected external video connectors (whether computer monitor or consumer electronic devices) to limit their picture quality to 600 lines of original picture resolution and prohibit the use of all high definition component analog outputs after a short term of years; and requests by the MPAA that 5C impose conditions on the use of DTCP for such applications as the OpenCable POD/Host specification.

DTLA Comments at 4. Given these demands, CEA agrees with DTLA that “it is inappropriate for it or any other licensor of copy protection technology to impose the additional restrictions on the operation of consumer devices requested by the MPAA without broad industry agreement or government oversight.” *Id.*

²⁶ NCTA Comments at 15.

²⁷ *Id.*

NCTA states that CableLabs agrees with MPAA and other content providers that “it is critical” that the DFAST license administered by CableLabs for POD deployment include copy protection requirements.²⁸ Further, NCTA also states that the primary parties to these discussions are the content providers and manufacturers, that there “is little the FCC can do to affect the copyright issues” at the core of these negotiations, and that “the Commission has no authority to resolve those issues.”²⁹ Moreover, NCTA suggests that the Commission has no authority over CableLabs and its licensing of DFAST technology, that if the Commission does have such authority, then CableLabs has not violated the navigation devices rules; and that, if the Commission does have the authority and CableLabs has violated the rules, then the Commission should grant a waiver of the navigation devices rules to allow CableLabs to impose copy protection requirements on DFAST licensees.³⁰

NCTA’s protestations to the contrary, the cable industry is not merely an innocent bystander to the dispute between content providers and manufacturers. Rather, it is a willing participant that has shown that it will support the demands of MPAA and other content providers to the detriment of consumers unless the Commission takes a firm stand in support of its own authority and rules. It is clear to CEA that CableLabs was moved to issue an interim “evaluatory” DFAST license only because of the proximity of the July 1 POD deployment deadline set by Commission rule. To argue that CableLabs, the technology research and development arm of the major cable MSOs, is not subject to rules addressed to multichannel video programming distributors (“MVPDs”) for licensing technology that the MSOs will deploy,

²⁸ *Id.* at 17.

²⁹ *Id.* at 16, 18.

³⁰ *Id.* at 21-23.

simply defies common sense. Further, on the central legal issue – whether the cable industry can dictate copy protection requirements in technology licensing agreements to effectuate POD deployment – NCTA makes no credible argument.

From the perspective of the Commission’s role in this controversy, the core issues are not those of copyright, but of navigation device functionality and cable operators’ control over such. Cable operators have legitimate and exclusive responsibility over conditional access, that is, measures to protect cable system security and to prevent cable signal theft. If copy protection is merely an extension of conditional access – which it is not – then such technology has no proper place as resident in commercially available host navigation devices, but should be confined to the POD provided by cable operators. If copy protection and conditional access are different – which they manifestly are – then cable operators violate Section 76.1204(c) if they require manufacturers to adopt copy protection measures as a condition to connect their equipment to cable systems through the POD interface. CEA thus agrees with the comments of Circuit City that Section 76.1204(c)³¹ prohibits CableLabs from imposing requirements on host device manufacturers that are unrelated to protection against threats to system security and conditional access.³²

As for the public policy circumstances that might justify a waiver of the navigation devices rules to allow CableLabs to impose copy protection requirements through DFAST licensing, CEA submits that it is not the case that the roll-out of digital television will suffer serious delay unless the Commission acquiesces in the dictates of MPAA and other content providers delivered through the willing tool of CableLabs and the cable MSOs (who are the

³¹ See 47 C.F.R. § 76.1204(c).

³² See Circuit City Comments at 16-18.

necessary licensees of the content providers). These parties will be brought to the table to reach reasonable agreements only if it is demonstrated to them that the Commission will not permit consumers' rights to reasonable home recording practices to be sacrificed. The "belt, suspenders, handcuffs, and ropes tied to the cuff" approach to copy protection that they have adopted will be discarded when these parties realize that their usual revenue streams will be jeopardized as alternative digital delivery systems (satellite, DVD, broadband wireless, and even over-the-air broadcasting), that are not subject to the leverage applied by CableLabs, move to fill the void. If, on the other hand, the power play exerted by the content providers in the cable context is successful, then they will be given incentives to move against these other delivery systems in the same way. The Commission should simply defy efforts to eliminate consumers' Supreme Court-sanctioned "Betamax" rights through the extortion of withholding digital content.

CEA does not oppose reasonable content security requirements that can be negotiated to the mutual satisfaction of the cable industry and CE manufacturers. In evaluating license agreements, the Commission, as a general matter, should take into consideration consumer interests and public policy concerns. In this regard, the Commission should evaluate any content security proposal to ensure that it strikes the appropriate balance between consumer and content provider rights, that it will not hinder the transition to DTV, and that it will not create unacceptable legacy problems for consumers.³³ The Commission must further ensure that content providers are not permitted to unilaterally set the terms for conditional access and copy protection, which, if permitted, will serve to harm consumers and consumer electronics manufacturers. Additionally, any agreement must ensure that manufacturers of typical consumer

³³ *Accord DTLA Comments at 10.*

electronics devices can easily implement content security technology without adding significant design complexity or manufacturing or product cost. CEA, like DTLA, also urges the Commission to

seek to ensure parity between manufacturers of host devices and set-top boxes available for retail sale and cable MSOs who include POD module capability in their products by endorsing only those agreements that impose consistent copy protection obligations on all products intended for cable delivery. To do otherwise would not only place manufacturers of retail products at an unfair disadvantage, but could jeopardize the security and interoperability of the copy protection systems deployed to work in conjunction with conditional access systems.³⁴

³⁴ *Id.* at 10.

III. CONCLUSION

For the foregoing reasons, CEA urges the Commission to resolve the remaining cable-consumer electronics compatibility issues consistent with the views expressed by CEA herein.

Respectfully submitted,

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