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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of:)
)
Implementation of Section 304 of the)
Telecommunications Act of 1996)
)
Commercial Availability of Navigation Devices)
)

CS Docket No. 97-80

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits the following Comments, filed pursuant to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned proceeding.¹

In the Further Notice, the Commission sought comment on whether the January 1, 2005 date for the phase-out of navigation devices with integrated security features remains appropriate and the impact an earlier or later date would have on manufacturers and multichannel video programming distributors ("MVPDs").² Cox submits that the January 1, 2005 date should not be advanced. Given the current technological and competitive state of the MVPD market, this date remains the earliest reasonable deadline for the continued provision of integrated boxes.

The requirements of Section 304 of the Telecommunications Act of 1996 required the Commission to adopt rules which ensure the commercial availability of navigation devices while also protecting the security of programming and other services offered over cable television

¹ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Further Notice of Proposed Rulemaking and Declaratory Ruling, FCC 00-341, September 18, 2000 ("Further Notice").

² *Id.* at ¶11.

at 4

systems and other MVPDs.³ Pursuant to this mandate, the Commission imposed the security device separation requirements contained in Section 76.1204(a)(1).⁴ In addition, the Commission determined that MVPDs' ability to offer navigation devices with integrated security functions should be phased-out and prohibited MVPDs from selling or leasing new integrated devices as of January 1, 2005.⁵ In setting the January 1, 2005 phase out date, the Commission sought to "minimize the impact of [the phase out of integrated boxes] on manufacturers and MVPDs, allowing manufacturers sufficient time to respond to equipment modifications."⁶ As discussed below, the advancement of the January 1, 2005 date would work at cross-purposes with the Commission's stated goals. Any acceleration of the phase-out date would not only be unduly burdensome on Cox and other cable operators, but would delay the provision of advanced services which are scheduled to be provided to Cox's customers.

I. Acceleration of the Phase-Out Date Will Delay the Delivery of Advanced Services

Cox is in the process of determining the technical and economic feasibility of several advanced services, including video on demand ("VOD") and interactive television ("iTV" – including interactive program guide, email, and web browsing), which are scheduled to be deployed over its existing platforms. Cox's experiences with VOD are illustrative and serve as a template for the development and delivery of other advanced services, including interactive

³ 47 U.S.C. § 549.

⁴ See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report & Order, 13 FCC Rcd 14775 (1998) ("Navigation Devices Order"); *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Order on Reconsideration, 14 FCC Rcd. 7596 (1999) ("Navigation Devices Recon. Order"); *General Instrument Corp. v. FCC*, Case No. 98-1420 (D.C. Cir. Jun. 6, 2000).

⁵ *Navigation Devices Order* at ¶69.

⁶ *Id.*

television. These experiences lead Cox to the conclusion that any acceleration of the phase-out date will delay the deployment and inhibit the development of advanced services over both integrated and separate navigation devices.

Cox's experiences with VOD and iTV illustrate the long lead-time which is necessary for the development, testing and roll out of services to its customer base. Cox began planning for VOD in late 1999 with a request for proposals ("RFP") to technology providers. In accordance with Cox's commitment to supporting the OpenCable process, Cox's RFP specifically requested information regarding the providers' plans to support the migration to OpenCable. The selection process was based, in part, on the responses to this inquiry. Nevertheless, Cox's first efforts to deploy VOD, by necessity, focused on existing technology – specifically the proprietary Scientific Atlanta system and the GI/Motorola platform, both of which are integrated security devices. Cox launched VOD service on this platform for a test group of 2,000 customers on September 26, 2000. This was accomplished only after a lengthy developmental effort, which included significant testing of the technology and service in Cox's engineering lab facilities and extensive field testing to a group of Cox employees under actual field conditions. Cox plans to extend VOD service to over 100,000 digital customers (encompassing over 500,000 basic customers) in the San Diego market during the second quarter of 2001. Cox will undertake a similar process in yet another market on the Scientific Atlanta proprietary platform, and still another market using the GI/Motorola platform by the end of 2001.

Cox has also undertaken a similar trial of iTV on the Scientific Atlanta platform using Liberate middleware in one of its markets. This trial, though under development for approximately the same period of time as VOD, has yet to progress beyond the employee-only phase of the trial because there is still much that must be accomplished on the technology

platform to ensure that the product is stable and meets Cox's standards and customer expectations. Cox's development process for services such as VOD and more complicated applications such as iTV require a good deal of time to conduct testing and re-testing. Advancing the ban on integrated devices from 2005 will only divert resources and delay the roll out of these services to both integrated and POD/host devices.

Cox's current trials are representative of the two different technology platforms Cox currently has in operation.⁷ As such, the current trials are based on existing, integrated security devices, with the expectation that VOD and iTV services will be rolled out on digital host devices using separate POD security modules later. Initial deployment of VOD on the Scientific Atlanta platform has taken over a year (and is still under development for iTV), and development on the second platform will take at least another three to six months until initial deployment. Cox expects incremental delays in the development and deployment of host/POD devices roughly equivalent to the initial planning/deployment timeframe for integrated devices. However, an accelerated phase-out date of integrated devices would delay the current deployment of VOD to Cox's subscribers for many months because the existing schedules for deployment of VOD services over existing platforms could not be maintained. Instead, the developmental focus would need to be immediately changed to deployment on separate security devices – without any devices actually being available for trial.

⁷ A third digital platform, used by some of Cox's recently acquired systems, poses special issues because that platform is slightly different from those used by Cox's other systems. The security elements of these systems are tied to a national addressable security system provided by HITS (a subsidiary of Motorola) and deployment on this platform will occur after the initial roll-out on the two other platforms are completed.

The advancement of the phase-out period will have unintended consequences on the current roll out of advanced services on integrated boxes over platforms currently under development. It will slow down ongoing equipment tests and trials because the efforts of the development community will necessarily be focused on developing platforms for the new digital host devices sooner in the development cycle than previously anticipated. The equipment vendors working with Cox on advanced services include Cox's existing vendors (Scientific Atlanta, GI/Motorola, Concurrent, and Seachange, among others), as well as new vendors such as Liberate and WorldGate. These companies' resources are allocated, in part, on the basis of priorities established by the current regulatory timetable. If the phase-out period for integrated boxes is accelerated, however, equipment vendors will be forced to prematurely allocate resources away from the development and testing of advanced services on platforms using currently existing equipment. This would create the potential to strand and delay the development of services over existing platforms while cable operators and equipment vendors scurry to meet new deadlines for the roll out of advanced services on platforms designed for non-integrated navigation devices.

As the Commission can appreciate, the development and deployment of new advanced services is a complicated process and follows a natural evolution. The procurement and delivery of those services over an entire customer base must go through several cycles of testing and refinement. Cox is in the midst of this process in its deployment of VOD and iTV – a process tailored to ensure successful deployment over both integrated and non-integrated devices. An accelerated phase-out of integrated devices will disrupt this ongoing process and adversely affect the long-term adoption of such services on all platforms.

The successful development and implementation of new technology and services also is predicated on developing customer information, business models and relationships with vendors and distributors which will lay the foundation for the wide scale roll out of services in the future across Cox's customer base. These efforts are all being implemented within the framework of the already established OpenCable process. Disruption of these efforts by shortening the phase-out period for services and equipment presently being rolled out will almost certainly impair Cox's ability to collect sufficient information and data which will support the rollout of advanced services to its customers.

For instance, consumer behavior information (*e.g.*, customer usage rates, buy rates, revenue per household, etc.) gathered from the initial deployment of VOD services will help determine the long term business model for VOD services. For this purpose, it is critical that the information is gathered in a "real" consumer environment (*i.e.*, an entire system, rather than a 2,000-user trial). Such a large-scale "real world" deployment will not be possible for Cox, however, until April 2001 at the earliest, and data will need to be collected over a period of several months. Thus, a clear understanding of the revenue stream that will ultimately support the delivery of VOD may not be possible until late 2001. If Cox is forced to re-deploy its resources to comply with an accelerated phase-out date on equipment and platforms which are in the middle of being developed and tested, it will be at the risk of interrupting the natural cycle of development and gathering of information to support the widespread deployment of VOD. Indeed, equipment vendors and cable operators cannot be expected to invest time and resources in developing new services, regardless of the platform, without first gathering the information necessary to determine the application of business models to equipment that works. Cox must first be able to adequately test and roll out sufficient equipment to enable it to obtain the data

necessary to make informed decisions as to the business models that it will use in this competitive marketplace.

A shift of capital and developmental resources from current platforms toward early deployment on the digital host/POD platform would be required if the Commission advances the 2005 date. This would not only delay the rollout of services in development over existing platforms, it could also reduce the types of new services which are to be deployed. The currently planned deployment of VOD services, for example, would see less investment in enhancing VOD features because resources that might otherwise go towards enhancing VOD would need to be re-allocated to deploy "first generation" VOD services on the digital host/POD platform. The Commission's interests in advancing new services would be sacrificed in an attempt to advance the timetable for the roll out of these services on the host/POD platforms. As pointed out in the comments of the National Cable Television Association being filed today, moving the effective date of the ban forward is unnecessary, given the industry's ongoing commitment to the OpenCable POD host initiative and the strong economic incentives of cable operators to develop retail distribution channels for their services and equipment used to access those services. On balance, then, moving the date forward would not only be unnecessary but ill-advised.

II. Accelerating the Phase-Out Date Will Place the Cable Industry at a Competitive Disadvantage

There is no question but that this resulting slow down and interruption of the roll out of new advanced services will adversely affect Cox's customers. An accelerated phase-out date, however, also will competitively disadvantage Cox and other cable operators *vis a vis* DBS providers. These navigation device rules do not govern the development of non-integrated equipment for DBS providers. Both DirectTV and EchoStar have proprietary closed networks and control all the elements required to distribute advanced services. Consequently, these DBS

service providers have both deployed advanced interactive services well in advance of their cable competitors (*e.g.*, PVR-integrated devices, iTV-integrated devices, internet-access-integrated devices, and AOL TV-integrated devices). Therefore, cable's primary video competitors would receive a distinct competitive advantage if the deployment and enhancement of advanced services were delayed by advancing the 2005 date.

Moreover, these factors also extend beyond these competitive concerns with regard to an additional impact on Cox's negotiations with other vendors. For example, the deployment of VOD requires interactive program guide ("IPG") providers and MSOs such as Cox to enter agreements which integrate VOD into the menu of programming provided to cable customers. Cox (and every other top five cable operator) is in the process of negotiating the terms and conditions that will govern long-term rights with IPG providers for VOD as well as other advanced services. These ongoing negotiations have been long and difficult for all parties. Several fundamental issues remain unresolved, including the integration of advertising and e-commerce into the IPG and ownership of these services, allocation of the cable operators' bandwidth to support competitive products distributed directly to consumers and the "tying" of key intellectual property rights to otherwise unacceptable e-commerce applications. The parties should not be forced to negotiate and resolve these complex issues involved with POD/host distribution of IPGs against a backdrop of an accelerated phase-out deadline of integrated devices.

Finally, as the Commission noted in the Further Notice, the transition period was intended to allow manufacturers and MVPDs time to adjust to not only a new technology but

also a new market in navigation devices.⁸ To Cox's knowledge, no retailer has placed even a single order for a digital host device⁹ despite that digital PODs have been available from cable operators since July 2000, and the specifications necessary for the design and manufacture of digital host boxes have been publicly available since October 1999.¹⁰ The notion that MVPDs should be given *less* time to respond to market changes when retailers have yet to enter, much less change, the market for navigation devices is not tenable.

⁸ *Further Notice* at ¶10 (citing *Navigation Devices Order* at 14803).

⁹ National Cable Television Association, *et. al.*, Status Report, *Implementation of Section 304 of the Telecommunications Act of 1996 – Commercial Availability of Navigation Devices*, CS Docket No. 97-80, July 7, 2000 (“July 2000 Status Report”).

¹⁰ *See id.* *See also*, National Cable Television Association, *et. al.*, Status Report, *Implementation of Section 304 of the Telecommunications Act of 1996 – Commercial Availability of Navigation Devices*, CS Docket No. 97-80, January 7, 2000 (“January 2000 Status Report”).

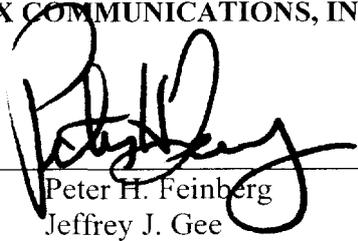
CONCLUSION

Cox submits that the adoption of artificial time constraints will harm, rather than advance the cause of rolling out advanced services. The advancement of the time line will most certainly work at cross-purposes with the Commission's stated goals to both create a competitive market for these devices and make available new services to the public. For the foregoing reasons, Cox opposes any acceleration in the phase-out date for navigation devices with integrated security features.

Respectfully Submitted,

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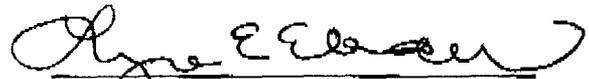
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DECLARATION

I am the Vice President, Video Product Management of Cox Communications, Inc. ("Cox").

I have read the foregoing Comments filed by Cox. The facts contained in the Comments filed by Cox are true and accurate to the best of my knowledge, information and belief.



Lynne Elander,
Vice President, Video Product Management
Cox Communications, Inc.

November 15, 2000