

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

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PP Docket No. 00-67

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

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PETITION FOR RECONSIDERATION

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PETITION FOR RECONSIDERATION

The National Cable Television Association (“NCTA”) hereby submits a Petition for Reconsideration of the Commission’s decision in the above-captioned proceeding¹ regarding the labeling of digital television (“DTV”) receivers. Specifically, NCTA urges the Commission to reconsider its adoption of the labels “Digital Cable Ready 1,” “Digital Cable Ready 2,” and “Digital Cable Ready 3” for digital television sets containing different features and capabilities and to adopt other rules to ensure that consumers, when considering the purchase of a DTV set, can make an informed choice about how various DTV sets will work with their cable system’s current and future offerings.

INTRODUCTION AND SUMMARY

As the Commission stated in the Report and Order, the issue here is “how best to indicate to consumers the capability of television receivers to operate with cable television systems.”² Although the Commission prefers “market-driven solutions” over regulation with respect to this issue, it “reluctantly” adopted labeling requirements for DTV receivers when the consumer

¹ Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Docket No. 00-67, FCC 00-342, Report and Order, released September 15, 2000, 65 Fed. Reg. 64388 (October 27, 2000) (“Report and Order”).

² Report and Order at ¶¶5, 29; Notice of Proposed Rulemaking in PP Docket No. 00-67, 15 FCC Rcd 8776, 8781 n. 34 (2000) (“Notice”).

electronics industry raised questions about its ability to enforce the labeling agreement it had reached with NCTA.³ NCTA believes that the Commission has taken the right step in recognizing the need to inform consumers about how their DTV sets will work with their cable systems but its labeling scheme falls far short of this goal.

As a procedural matter, the Commission did not allow interested parties an opportunity to comment on the labels it adopted. Indeed, the Commission indicated in the Notice that it was not wedded to the term “cable ready,”⁴ but nevertheless adopted that very term for DTV set labels. This decision was made despite the fact that, for good reason, the cable and consumer electronics industries rejected “cable ready” terminology for digital receivers early on and worked hard to reach agreement on new, more informative labels. The labels “Digital TV-Cable Connect” and “Digital TV-Cable Interactive” – along with an appropriate disclaimer for the first category of DTV sets which would not have a 1394/5C interface – were jointly presented to the Commission on May 24, 2000 by the Consumer Electronics Association (“CEA”) and NCTA but were later disavowed by the consumer electronics industry.

Rather than adopt a solution based on these more descriptive, forward-looking labels, plus a disclaimer, the Commission looked to the past and adopted the discredited “cable ready” terminology to resolve the labeling issue. While the Commission believes that the “Cable Ready 1-2-3” designations will enable consumers to make “well-informed” decisions about the capabilities of their digital TV sets, it is clear that those labels will be confusing and potentially misleading to consumers.

³ Report and Order at ¶1.

⁴ Notice at n. 34.

The term “cable ready” carries a legacy of problems from the analog world where a consumer purchased a so-called “cable ready” television receiver, only to get it home, set it up and often find out that it did not work with their cable system. A focus group study by Peter D. Hart Associates, commissioned by NCTA, shows that consumers expect “cable ready” to mean the ability to connect the TV set to the cable wire without a set-top box.⁵ If a television set is marked “cable ready,” but then may require a set-top box – as is the case with the FCC’s “Digital Cable Ready 2” set – it will only anger and confuse consumers. Moreover, the research shows that consumers do not recognize any single natural order implied by the labels “one,” “two,” and “three,” adding further confusion to the FCC’s choice of labels.

Market research shows that consumers express strong preference for labels that help them understand the differences and distinctions among television set options. In this case, terminology that spells out more clearly the key distinction between one-way and two-way capability is important to enable customers to make informed decisions. The Commission’s “Digital Cable Ready 1-2-3” labeling scheme fails in this regard.

The rules also short-change consumers by allowing manufacturers to place small labels in an inconspicuous area on the set – i.e., anywhere, including the back of the set. A label affixed to the back of the set is not likely to be seen by anyone, certainly not the consumer perusing equipment on the showroom floor. The focus group study showed that consumers depend on product labeling and in-store displays in making their purchases. The Commission’s rules do not require the manufacturers or retailers to display, make available or even include in manuals, the

⁵ “Consumer Focus Groups on Digital TV Labeling,” Peter D. Hart Associates, Inc., October 17, 2000 (“Hart Research Report”). A summary of that report is attached to this petition. Transcripts and videotapes of these sessions are available upon request.

“Sample Comparison Chart For Digital Cable Ready TV Receiving Devices” appended to the Report and Order. Thus, even if more descriptive labels are chosen, the inconspicuous placement of the small labels permitted by the rules will make them virtually meaningless to consumers.

The last area where the labeling scheme may adversely affect consumers is the Commission’s failure to mandate the inclusion of the 1394/5C or equivalent interface in sets marketed as “Cable Ready 3” (bidirectional integrated sets). This interface would, however, be required in all “Cable Ready 2” receivers. Without such an interface, integrated DTV sets will not be able to be connected to a cable set-top box or other digital devices for receipt of future interactive services. Given the rapidly evolving state of digital technology, the cable industry believes that DTV sets without a 1394/5C or comparable interface could become prematurely obsolete or could fail to keep pace with interactive television offerings. It is very conceivable that consumers might want to connect a device even to the integrated set, particularly where it would allow consumers to upgrade their equipment without purchasing a new DTV set.

NCTA believes that the labeling rules will not serve the public interest. We urge the FCC to reconsider its rules and adopt the labels agreed to by the cable and consumer electronics industries on May 24, 2000. DTV sets without a 1394/5C or other equivalent interface should be labeled “Digital TV-Cable Connect” and be accompanied by an appropriate disclaimer, while those with the interface should be labeled “Digital TV-Cable Interactive.” Alternatively, if the Commission believes it is compelled to use the term “cable ready” in its labels, the Commission should adopt the label “Digital Cable Ready One-Way” for DTV sets without a 1394/5C or comparable interface, and “Digital Cable Ready Two-Way” for DTV sets with a 1394/5C or comparable interface. The CEA-NCTA agreement did not include a label for the set the FCC has labeled “Digital Cable Ready 3.” While we think it is premature at this time to adopt labels for

such a set, we are prepared to work with others to develop an appropriate label for such sets. We also urge adoption of a requirement that an appropriate disclaimer – such as that agreed upon by CEA and NCTA – accompany manuals and marketing material for DTV sets without the 1394/5C interface.

Finally, we ask the Commission to require manufacturers and retailers to place a grid “comparison” chart, such as the one accompanying the Report and Order, in plain view on marketing materials and on showroom floors. A readily visible comparison chart will ensure that consumers are adequately informed about the capabilities of each type of DTV set before they make their purchase.

BACKGROUND

The cable and consumer electronics industries have worked long and hard over the past several years to resolve compatibility issues regarding digital television equipment.⁶ The goal has been to ensure that consumers are able to receive existing and future services provided by cable while fully utilizing the functions and features of their consumer electronics equipment. To achieve this objective, the industries recognized the importance of appropriate labels for the marketing of DTV receivers in order to ensure that consumers make well-informed decisions. Given the history of customer confusion that arose in the marketing of analog sets labeled “cable ready” or “cable compatible,” it made sense to avoid customer dissatisfaction this time around with more accurate and informative labels.⁷ Otherwise, customers would again mistakenly

⁶ See e.g., Comments of NCTA, May 24, 2000; Reply Comments of NCTA, June 8, 2000.

⁷ As the Commission recognized over six years ago, simply limiting its “cable ready” technical standards to devices marketed as “cable ready” or “cable compatible” while allowing other products that have features for use with cable “could lead to confusion [among consumers] about the extent to which the products that are available to them in the market are compatible with cable service.” 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, First Report and Order, 9 FCC Rcd 1981, 1995 (1994). However,

assume that their DTV sets would always be able to receive and use all cable services available from their cable company.

In response to this and related compatibility concerns, the cable industry initially urged the consumer electronics industry to include the 1394/5C interface in all DTV sets.⁸ The inclusion of the 1394/5C or a functionally equivalent interface would ensure that consumers would have the benefit of all existing and future cable services and, in particular, would ensure that all digital sets would be capable of accessing and displaying cable's two-way, interactive services. As the Commission acknowledged, "[t]he transformation of the cable business from a largely one-way form of transmission (from the cable operator to the viewer) to a two-way interactive model (with the viewer sending messages, requests, and other data 'upstream') requires profound changes in equipment design."⁹

When the cable and consumer electronics industries could not reach agreement on the inclusion of the 1394/5C interface or its equivalent on all DTV sets, a compromise was reached to accommodate both sides. Under the agreement, not all sets would have the interface but those without the interface would be labeled accordingly to avoid consumer confusion about the capabilities of the equipment. Indeed, the negotiating teams from both sides agreed at the outset not to use the labels "cable ready" or "cable compatible" given the legacy of problems and misunderstanding over those terms in the analog context. The Commission seemed to

on reconsideration, the Commission eliminated the requirement that TV receivers that may be used with cable, but do not fully comply with the "cable ready" standards, be labeled with an advisory that appears on the device and its packaging. Memorandum Opinion and Order, ET Docket No. 93-7, 11 FCC Rcd 4121, 4129 (1996).

⁸ The "1394/5C interface" refers to the Society of Cable Television Engineers DVS-194 r1 standard which includes the IEEE 1394 high performance serial bus interface and 5C Digital Transmission Content Protection. This requirement is part of CableLabs' OpenCable specifications for set-top boxes. It provides a means to deliver high-resolution digital video services to DTV sets and meets the requirements for basic and planned functionality in cable systems.

⁹ Notice at ¶2.

acknowledge this history in the Notice when it said that it is “not wedded to the phrases ‘cable ready’ or ‘cable compatible.’”¹⁰

Months of intense discussion and negotiation among legal, marketing and engineering representatives from both industries culminated in the submission of a joint NCTA-CEA agreement to the Commission on May 24, 2000.¹¹ The letter to Chairman Kennard from the heads of the National Cable Television Association and the Consumer Electronics Association stated:

[W]e have reached an agreement, subject to trademark searches and related legal due diligence, on the labeling of digital television sets with and without a 1394/5C connector, descriptions of the features and functions of such sets, and a disclaimer, to be included in consumer electronics product manuals and brochures, with respect to the capabilities of DTV sets without the connector.¹²

The industries agreed that DTV sets without a 1394/5C interface would be labeled “Digital TV-Cable Connect” and those with a 1394/5C interface would be labeled “Digital TV-Cable Interactive.” The industries also agreed on an appropriate disclaimer to accompany DTV sets without a 1394/5C connector so consumers would know that such sets may not work with all features and services offered by their cable systems.

As the Report and Order points out, the consumer electronics retailers opposed the labels and the Consumer Electronics Association – which had agreed to the labels – later told the

¹⁰ Id. at n. 34.

¹¹ Letter to Chairman William E. Kennard from Robert Sachs, President and CEO, National Cable Television Association and Gary Shapiro, President and CEO, Consumer Electronics Association, May 24, 2000.

¹² Id. While the agreement focused on the 1394/5C interface technology, the cable industry recognized that one of the benefits of industry-to-industry agreements is that they allow flexibility to promptly respond to future advancements in technology. See Comments of NCTA, Compatibility Between Cable and Consumer Electronics Equipment, PP Docket No. 00-67, May 24, 2000 at 4. That would permit substitution of a functionally equivalent interface should technological advances recommend such a move.

Commission that “implementation of labels by manufacturers over retailer opposition would be difficult.”¹³ The Commission concluded that consensus had not been reached among all the relevant parties and decided to adopt its own set of labels for DTV sets.

I. THE COMMISSION’S LABELS WILL NOT ONLY CONFUSE CONSUMERS BUT ALSO CAN BE AFFIXED TO DIGITAL RECEIVERS IN SUCH AN INCONSPICUOUS PLACE AS TO BE USELESS

A. The FCC Labels Are Confusing and Potentially Misleading

In the Report and Order, the Commission declined to require that all DTV receivers have a 1394/5C or other equivalent interface, and instead adopted labeling requirements for equipment to inform consumers about the capabilities of different receivers.¹⁴ The labels are to be applied to three types of DTV receivers: (1) a unidirectional receiver capable of direct connection to a cable system, (2) a unidirectional receiver capable of direct connection but that also includes a 1394 interface, and (3) a bidirectional receiver capable of direct connection to a cable system and of accessing interactive services using that direct connection.¹⁵ The Commission also suggested that a bidirectional set with a 1394 interface might be desired by some consumers but did not mandate this category for labeling purposes. It also emphasized that the 1394 interface may not be the only digital interface available and that DTV devices may incorporate one or more of these other interfaces in addition to the 1394 interface.¹⁶

The Commission decided to base its labels on the problematic term “cable ready,” believing that its labeling scheme will “permit consumers to make well-informed decisions about

¹³ Report and Order at ¶2, n. 4, quoting Letter from Michael Petricone to Magalie R. Salas, Federal Communications Commission, Office of the Secretary, (June 27, 2000) in PP Docket No. 00-67.

¹⁴ Id. at ¶13.

¹⁵ Id. at ¶20.

¹⁶ Id.

DTV equipment purchases based on a clear understanding of the capabilities of receivers with different labels.”¹⁷ The three labels are defined as follows:

Digital Cable Ready 1: A consumer electronics TV receiving device capable of receiving analog basic, digital basic and digital premium cable television programming by direct connection to a cable system providing digital programming. This device does not have a 1394 connector or other digital interface. A security card (or POD) provided by the cable operator is required to view encrypted programming.

Digital Cable Ready 2: A consumer electronics TV receiving device capable of receiving analog basic, digital basic and digital premium cable television programming by direct connection to a cable system providing digital programming. This receiving device will incorporate all features defined in Digital Cable Ready 1 and will also include the 1394 digital interface connector. A security card/POD provided by the cable operator is required to view encrypted programming.

Digital Cable Ready 3: A consumer electronics TV receiving device capable of receiving analog basic, digital basic and digital premium cable television programming. This device will incorporate all features defined in Digital Cable Ready 1 and will also receive advanced and interactive digital services by direct connection to a cable system providing digital programming and advanced and interactive digital services. A security card/POD provided by the cable operator is required to view encrypted programming.¹⁸

As noted above, both the cable and consumer electronics negotiating teams agreed that the terms “cable ready” and “cable compatible” carried a legacy of problems from the analog world and, therefore, would not be considered for DTV sets. Given the Commission’s recognition in the Notice that these terms are problematic,¹⁹ it is surprising that it returned to this discredited terminology on the grounds that its statutory labeling authority specifically mentions the terms “cable ready” and “cable compatible.” The Commission gave no hint in the Notice that it believed it was obligated to continue to use the terms and, in fact, sought comment on an

¹⁷ Id. at ¶13.

¹⁸ Id. at ¶24-26.

¹⁹ Notice at n. 34.

“alternative designation” for certain DTV sets.²⁰ Moreover, in the Report and Order, the Commission concluded that: “Section 336 of the Act also provides us the authority to go beyond the cable ready/not cable ready dichotomy.”²¹

Finally, as the Commission pointed out, the equipment compatibility provisions which included the terms “cable ready” and “cable compatible,” were enacted prior to the authorization of digital television service. But Congress anticipated that the Commission would need flexibility in regulating fast-changing technology by enacting a provision that permits FCC regulations to be changed “to reflect improvements and changes in cable systems, television receivers, videocassette recorders, and similar technology.”²² With the advent of a whole new television service, why would the Commission feel compelled now to fall back on confusing analog “cable ready” terminology?

Market research shows that the problems associated with “cable ready” terminology will carry over to the digital context. Indeed, “Cable Ready 1-2-3” labels, particularly standing alone, will unintentionally mislead consumers. As described in the attached report, NCTA recently commissioned Peter D. Hart Associates, Inc. to conduct focus group sessions among consumers to explore labeling options for digital television sets.²³ During the sessions, the groups were presented with the labels adopted by the Commission, labels that were agreed to by the consumer

²⁰ Id. at ¶18.

²¹ Report and Order at ¶23.

²² 47 U.S.C. §544(a).

²³ Peter D. Hart Research Associates, Inc. is one of the leading survey research firms in the United States. The firm has conducted over 5,000 public opinion surveys and has administered and analyzed interviews among more than three million individuals. The participants in the labeling focus group were recruited over a one week period by a sub-contracted focus group facility in Alexandria, Virginia and were provided \$50.00 each as an incentive for their participation in the two-hour discussion. The participants represented a cross-section of age, income and education levels. Allan Rivlin, Senior Vice President of Hart Research, moderated both sessions under the advisement of Peter D. Hart. Mr. Hart and Mr. Rivlin’s biographies and background information on the firm are attached to the report accompanying this Petition.

electronics and cable industries last May, and additional label options. The first session was comprised of nine individuals with an average level of technological knowledge and the second session was comprised of 13 consumers with a high level of technological knowledge, based on their answers to a series of questions about high tech products and developments.

Hart Research found that consumers are starting to learn about digital technology, but are still easily confused as to the differences between, for example, digital television, high definition television and interactive television. They do, however, have a clear idea of what they think “cable ready” means: the ability to connect the cable directly to the TV set without needing a converter box. While the research showed that consumers generally prefer not to have set-top boxes, they find the boxes more acceptable when it is explained to them that set-top boxes may allow them to upgrade to new services without replacing their TV set.²⁴ This is consistent with the Commission’s recognition that connectors in DTV equipment provide an “insurance policy” for consumers desiring to upgrade to new services.²⁵ But the study found that “labeling a television “cable ready” if it requires a converter box not only will confuse many customers, but also is likely to anger some of them.”²⁶

The study showed that most consumers reject the FCC labels as inadequate descriptors of the various types of digital television receivers. They believe that the terms do not convey enough information and do not communicate the various sets’ capabilities. In particular, the

²⁴ Hart Research Report at 2.

²⁵ Report and Order at ¶18.

²⁶ Hart Research Report at 2.

researchers found that “consumers do not recognize a single natural order implied by the labels ‘one,’ ‘two,’ and ‘three.’”²⁷ As the report explained:

In fact, the progression suggests different hierarchies to different people. Given a choice between products labeled “Type One,” “Type Two,” and “Type Three,” some consumers assume that Type One represents the best and most expensive, based on their experience with products such as Grade A milk, eggs, and meat, or first-place sports finishes. Others infer that Type Three is the newest, best, and most expensive, based on their acquaintance with such products as Microsoft Office 3.0.²⁸

According to the report, “consumers express strong preference for labels that help them remember the distinctions among the television options, which leads them to give ‘Digital Cable Ready One/Two/Three’ the lowest grade of the three label options tested.”²⁹ And again, consumers reject, in particular, the use of the term “cable ready” for category 2 sets because the possibility of needing a set-top box to receive certain cable services contradicts their basic understanding of what “cable ready” means.

In the labeling plan initially agreed upon by the cable and consumer electronics industries – “Digital TV-Cable Connect” and “Digital TV-Cable Interactive,” plus a disclaimer for the DTV set without a 1394/5C or equivalent interface – the industry negotiating teams tried to hone in on the key distinction between one-way and two-way capability. Those labels were viewed by the focus group as better than the FCC’s labels but still not good enough.³⁰ Nevertheless, it is clear

²⁷ Id. at 3.

²⁸ Id.

²⁹ Id. 3-4.

³⁰ Because the NCTA-CEA agreement did not include labels for the third category of DTV set (i.e. the bidirectional integrated set) labeled by the Commission, the focus group also was presented with a proposed label for that third category – “Digital TV/Integrated Cable Interactive” – that was created by the NCTA for purposes of the focus group effort.

that the negotiating teams were on the right track from a consumer-benefit standpoint when these labels are compared to the following alternative designations created by the focus group participants:

| Category of DTV Set | Mid Tech Group | High-Tech Group |
|----------------------------|---------------------------------------|---|
| 1 | * Digital TV/Cable Ready | * Digital Cable-Ready TV |
| 2 | * Digital TV/Interactive Cable Box TV | * Digital Two-Way (or Digital Interactive) TV |
| 3 | * Digital TV/Direct Interactive Cable | * Digital Cable-Ready Two-Way (or Digital Cable-Ready Interactive) TV |

These designations reflect consumer preference for labels that “offer information about the differences among the television sets in a simple, understandable, and concise manner,”³¹ and in this case show a preference for some indication in the labels of two-way or interactive capability.

The basic conclusions of the Hart Report are:

- The labels must be descriptive giving consumers a means for differentiating between the three types of sets.
- The labels must be precise and concise with well chosen words that communicate without overwhelming consumers.
- Additional information to assist consumers must be readily available
- Most consumers gain information about their electronics options in the showroom. Few consumers ever look at the back of the set, the outside of the box, or booklets packed inside the box before deciding on a new purchase.³²

³¹ Hart Research Report at 4-5 (emphasis added).

³² *Id.* at 5-6.

The bottom line of the focus group study is that consumers regard it as important to have enough information to “allow them to make an informed decision.”³³ The FCC labels do not accomplish that goal.

NCTA believes that the labels plus the agreed-upon disclaimer adopted by the cable and consumer electronics industries – after months of negotiation – provide more accurate and useful information to consumers. Therefore, we urge the Commission to reconsider its “Cable Ready” labeling scheme and adopt the “Digital TV-Cable Connect” and “Digital TV-Cable Interactive” designations as proposed by NCTA and CEA. NCTA and CEA did not propose a label for the as-yet-undeveloped category 3 DTV set. We believe it is premature to adopt a label for such a set, but we are prepared to work with others to do so. NCTA also believes that the disclaimer agreed to by the industries – modified to take into account legitimate retailer concerns – should accompany consumer material so that consumers would know that sets without the 1394/5C interface or a functionally equivalent interface may not provide all current or future features and services offered by their cable system.

Modifying the labels to meet the foregoing concerns is only the first step. As discussed below, even if the previously agreed-upon labels or other more descriptive labels are chosen, the physical placement and size of the labels under the rules – *i.e.*, anywhere, including the back of the set with almost no limits on type size – make them virtually meaningless to the consumer.

B. The Rules Permit Inconspicuous Placement of Small Labels, Making Them Practically Meaningless to Consumers

In the Report and Order, the Commission requires physical placement of the labels in accordance with the terms of section 2.925(d) and (e) of the Commission’s equipment

³³ *Id.* at 5.

authorization rules.³⁴ Section 2.925(d) requires that “the nameplate or label shall be permanently affixed to the equipment and shall be readily visible to the purchaser at the time of purchase.” The rules define “readily visible” as simply “visible from the outside of the equipment enclosure.” While the rules provide that “it is preferable” that the nameplate be “visible at all times during normal installation or use,” they state that “this is not a prerequisite for grant of equipment authorization.”³⁵ The provision in Section 2.925 of the Rules dealing with type size³⁶ – and which itself does not require that the type face be larger than eight-point – is not even required by the Commission’s rules on DTV labeling.³⁷

Thus, manufacturers of DTV receivers may affix the permanent label just about anywhere on the set provided it is on the outside of the equipment enclosure. Typically, manufacturers put these nameplates on the back of the equipment (such as computers, television sets, video recorders). And, as noted above, the size of the type face of the label apparently is not covered by any rule.

The placement rules may work fine for most FCC-authorized equipment, but they are completely inadequate for equipment that the Commission itself has recognized needs labels that will “avoid consumer confusion” and “speed the digital transition.”³⁸ A label affixed to the back of the set will not be seen by anyone, certainly not the consumer perusing equipment on the showroom floor. The focus group study revealed that “product labeling and in-store product

³⁴ Report and Order at ¶29, citing 47 C.F.R. §2.925(d) and (e).

³⁵ 47 C.F.R. §2.925

³⁶ 47 C.F.R. §2.925(f).

³⁷ Report and Order at ¶29 and amended Rule 15.19(d)(2)(iii) (requiring compliance with Section 2.925(d) and (e), but not 2.925(f)).

³⁸ Id.

displays” are among the major sources of information for consumers.³⁹ Consumers like to comparison shop and to corroborate information from salespeople with information from other sources. Indeed, a trip to the showroom floor of an electronics store is often the first stop in their information-gathering. As the research shows, “most consumers gain information about their electronics options in the showroom,” particularly the information cards provided by retailers.⁴⁰ As Hart explains, “few customers ever look at the back of the set, the outside of the box, or booklets packed inside the box before deciding on a new purchase.”⁴¹

If DTV set labels only have to appear visible on the outside of the equipment enclosure, the consumer will likely not see it at the point of purchase. Moreover, the Commission’s rules do not require the manufacturers or retailers to display, make available – or even include in manuals – the “Sample Comparison Chart For Digital Cable Ready TV Receiving Devices” appended to the Report and Order. That chart describes, in grid format, the functions and capabilities of each category of DTV set subject to the labeling designations. The Commission’s rules do not mandate that the manufacturer affix this information to the set or to the box nor do they require it to be displayed by the retailer at the point of purchase. It is unlikely, therefore, that consumers will ever see it.⁴²

Without specific requirements for the placement of the label and the size of its type, no consumer will know whether a set is “Cable Ready 1, 2 or 3.” And without the assurance that

³⁹ Hart Research Report at 2.

⁴⁰ Id. at 6.

⁴¹ Id. (emphasis added).

⁴² It should also be noted that all the Commission has done is provide that, if a manufacturer builds a set meeting the specifications of a “Digital Cable Ready 1-2-or 3” set, it must label it as such. But if a manufacturer builds a DTV set that, for some reason, does not include all of the features of one or more of the three labeled sets, that set can be marketed under any label except for the three FCC-mandated labels, adding to the overall confusion.

additional information about the capabilities of these digital receivers will be made available by the manufacturer or retailer, consumers are again likely to purchase a set, take it home, set it up, only to often find out that the set's capabilities vis-à-vis cable do not meet their expectations.

At a minimum, the Commission should require that (1) the digital television receiver labels should be affixed to a place on the set and in marketing and display materials where they can be readily viewable by consumers, such as the front of the set or a nearby product display, and (2) a comparative features chart is displayed in marketing materials and in a prominent place in the retail showroom.

II. THE CATEGORY 3 DIGITAL SET SHOULD BE REQUIRED TO INCLUDE A 1394/5C OR OTHER FUNCTIONALLY EQUIVALENT INTERFACE

As noted above, the Commission defines the third category of DTV receiver, "Digital Cable Ready 3," as a bidirectional receiver capable of direct connection to the cable system and of accessing interactive services using that direct connection. As defined, it does not require inclusion of a 1394/5C or other functionally equivalent interface for the connection of additional digital equipment. The Commission recognizes that some consumers may want a DTV receiver that is both bidirectional and has a 1394/5C or equivalent interface but it does not require such a device. It simply assumes that some manufacturers will cater to this preference. NCTA believes this is a short-sighted approach.

With regard to "Digital Cable Ready 2" sets, the Commission envisions a unidirectional DTV receiver equipped with a 1394/5C interface that could access advanced and interactive services via a set-top box. It goes on to say:

To the extent cable operators are continually developing new services, and to the extent that some of those services may require capabilities not available in earlier models of DTV receiver, one can imagine a subscriber wanting a 1394

connector as an “insurance policy.” Rather than replacing his or her DTV receiver in order to upgrade the capability to access advanced services, the subscriber might prefer to purchase an upgraded set-top box and connect it to the DTV using a 1394 connector.⁴³

The same rationale for including a 1394/5C or equivalent interface in unidirectional sets – as an “insurance policy” for consumers – applies with equal force to bidirectional receivers capable of direct connection to cable systems. Under the Commission’s current rules, the presumably more advanced DTV set, labeled “Digital Cable Ready 3,” could ironically be less capable of accessing advanced cable and other digital services than the “Digital Cable Ready 2” set when it should be capable of doing everything that the second level DTV set can do. The 1394/5 or equivalent interface may not be needed for connection of additional digital equipment today, but it could be needed for future digital equipment or services. The Commission’s decision would freeze technology in the “Digital Cable Ready 3” set and maroon it on an ever-changing digital landscape.

The Commission’s scheme assumes that the category 3 set is the best of the “good-better-best” threesome although, as described above, consumers may be divided about that conclusion. In any event, while the second set (“better”) requires that a 1394/5C interface be included, the third set (“best”) does not. Commissioner Ness recognized that confusion may arise from a labeling scheme that stamps a digital TV set “cable ready” while the device is incapable of receiving a digital over-the-air signal.⁴⁴ Similar confusion will arise if the “best” DTV set (category 3) cannot connect to other digital devices to receive future, unanticipated services

⁴³ Report and Order at ¶18.

⁴⁴ Id. at Separate Statement of Commissioner Susan Ness.

because it does not have a 1394/5C or other equivalent interface although the “better” DTV set (category 2) can do so.

The Commission acknowledges that “cable television systems provide a more varied mix of services than before and that variety is likely to increase over time.”⁴⁵ Indeed, just as Internet applications were unforeseen over 5 years ago, there are services and applications that we cannot anticipate now. For example, external personal video recorders or other peripheral digital devices will make use of a 1394/5C or other equivalent interface. Sets that connect directly to a cable system and do not have a 1394/5C or equivalent digital interface may not function with certain future digital equipment or services. Inclusion of the 1394/5C or equivalent interface would reduce the need for consumers to purchase a new DTV set every few years in order to receive new digital services.

The Commission should mandate that a 1394/5C or other functionally equivalent interface be included on all Category 3 sets (those for which the Commission now requires a “Digital Cable Ready 3” label) so that over the life of the set the consumer will be able to receive all future cable services and other services requiring the connection of a digital device to a DTV set.

CONCLUSION

As the Commission recognized, Congress expressed concern in section 624(A) of the Communications Act that compatibility problems might reduce consumer demand for, and manufacturer willingness to supply, “television receivers and video cassette recorders with new and innovative features and functions.”⁴⁶ Labels that will only exacerbate the long history of

⁴⁵ Id. at ¶23.

⁴⁶ Id. at ¶29.

consumer confusion over what is and is not “cable ready” will not advance the clear Congressional concern for fostering the availability of equipment with new and innovative features and functions.

In sum, promoting consumer confidence in new digital equipment – by avoiding confusion through the provision of informative labels and other information – is critical to the successful transition to digital television. NCTA therefore urges the Commission to reconsider its labeling scheme and to adopt the labels agreed upon by the cable and consumer electronics industries on May 24, 2000 (including the disclaimer) so that consumers will know how their DTV sets will work – or will not work – with a cable system’s offerings. The label also must go on the front of the set and in marketing and display materials and be of large enough type-face so it is clearly visible. A grid comparison chart describing the features and functions available from the various categories of DTV sets must be in marketing materials and in retail stores. We also urge the Commission to mandate the inclusion of the 1394/54C or other functionally equivalent interface in bidirectional integrated digital receivers.

Respectfully submitted,



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November 27, 2000

M E M O R A N D U M

TO: NCTA
FROM: PETER D. HART RESEARCH ASSOCIATES
DATE: OCTOBER 17, 2000
RE: CONSUMER FOCUS GROUPS ON DIGITAL TV LABELING

On October 2, 2000, Peter D. Hart Research Associates conducted two focus groups with consumers to explore labeling options for digital televisions. The participants represented a cross-section of age, income, and education and were recruited over a one-week period by a focus group facility in Alexandria, Virginia. They were provided \$50.00 for their involvement in the two-hour session.

The first session was comprised of nine individuals of "average" technological skill and interest. The second session was comprised of thirteen individuals with a high level of technological knowledge, as defined by their answers to a series of questions about high tech products and developments. Allan Rivlin, Senior Vice President of Hart Research, moderated both sessions. Mr. Rivlin has extensive experience in public opinion research and has conducted numerous focus group sessions and surveys on political, social and commercial topics. Further background information on Hart Research is attached to this report.

The participants in the labeling focus groups were presented the labels proposed by the FCC and by NCTA for discussion. The consumers also were given an opportunity to suggest labels that they would find useful. NCTA has been provided tapes and transcripts of the sessions. The following report is a summary of our findings.

Consumers are starting to learn about digital technology, but still are easily confused.

Overall, consumers have a significantly greater understanding of what digital

cable is than they did even one year ago, but most still do not distinguish digital television (DTV) from high-definition television (HDTV). If five consumers are asked to

"I'm thinking that, like cable, digital television comes down in blocks, and it makes a clearer screen than regular composition."

"Aren't high definition and digital just about synonymous? Aren't they? I would imagine they'd be really close."

define “interactive television,” they are likely to offer five different definitions, ranging from some who believe that interactive television offers video games and quizzes, to others who believe that it allows viewers to vote for a happy or sad ending to a movie, to still others who believe that it allows them to converse with their sets, as they have seen in the *Jetsons* cartoon series.

Initially, consumers are confused by their choice of three types of digital television. Although they long for simpler days when their only options were “color” or “black and

“You can just screw the cable cord directly into your television. You don’t need a box or anything, but attach it there.”

white,” and television was among the simpler electronic commodities, most people come to understand the new choices fairly quickly once they are explained.

Consumers have a clear idea of what “cable ready” means.

Cable customers understand the term “cable ready” and are able to articulate correctly what it means in terms of purchasing a television. When they buy a cable-ready television, they expect to be able to connect the cable directly into the television set without using a converter box. Many consumers express animosity toward cable converter boxes, so that labeling a television “cable ready” if it requires a converter box not only will confuse many customers, but also is likely to anger some of them. It should be noted that consumers’ negative views of set top boxes are not so strong as to keep them from warming up to the boxes when they learn that external boxes may offer an upgradeability advantage over built-in cable interfaces.

Product labeling and in-store product displays are major (but not the only) sources of information for consumers.

Long wary of all types of salespeople, consumers report that they have learned to corroborate the information that they get from salespeople with information from other sources. They cite magazine articles, Internet research, and recommendations from

friends among the ways in which they supplement their information. And while consumers also look to product labels for information, they do not hesitate to turn to outside sources for explanations. Most say that the first step in their process of buying a major piece of home entertainment equipment is a trip to an electronics showroom, even if the only goal of that trip is to comparison shop and learn what questions they need to ask.

Most consumers reject the FCC labels as not informative and potentially confusing.

In each session, consumers were given their own opportunities to label the sets, and they were given opportunities to react to three sets of suggested names. The organization recommending the names was not identified in the sessions. One set of suggestions were those that come from the FCC.

- Digital Cable Ready 1
- Digital Cable Ready 2
- Digital Cable Ready 3

Reaction: Consumers do not recognize a single natural order implied by the labels “one,” “two,” and “three.” In fact, the progression suggests different

“The labels they gave are absolutely non-descriptive. They don’t tell you why one is one, why two is two, why three is three. There’s not enough information there.”

“For me, the names were not memorable. I’m looking for something that will help me, convince me to buy it, and help me distinguish one from the other.”

“I like to keep things simple, and I get really confused by letters and numbers and long names. The name needs to connote quality.”

hierarchies to different people. Given a choice between products labeled “Type One,” “Type Two,” and “Type Three,” some consumers assume that Type One represents the best and most expensive, based on their experience with products such as Grade A milk, eggs, and meat, or first-place sports finishes. Others infer that Type Three is the newest, best, and most expensive, based on their acquaintance with such products as Microsoft Office 3.0.

As a result, consumers reject “Digital Cable-Ready One,” “Digital Cable-Ready Two,” and “Digital Cable-Ready Three,” because these labels are not descriptive enough to help them in their deliberations among various types of digital televisions. Consumers express a strong preference for labels that help them remember the distinctions among the



television options, which leads them to give “Digital Cable-Ready One/Two/Three” the lowest grade of the three label options tested. In addition, they strongly reject “Digital Cable-Ready Two” because the possibility of needing a set-top box contradicts their basic understanding of “cable ready.” If consumers learn that they eventually may need a converter box to access some features, they may become angered by the “cable-ready” label.

Consumers prefer labels that are even more descriptive than those proposed by the NCTA.

Consumers were also given a chance to react to labels suggested by NCTA and the Consumer Electronics Association.

- Digital TV/Cable Connect
- Digital TV/Cable Interactive
- Digital TV/ Integrated Cable Interactive¹

These labels are viewed as better, but still not good enough. They are clearly an attempt to give the sets descriptive names but they do not make consumers comfortable. Consumers see the third option, in particular, as unwieldy.

An additional set of labels was also placed on the table.

- Digital Cable-Ready/One-Way
- Digital Cable-Ready/Two-Way
- Digital Cable-Ready/Integrated Two-Way

This set comes closer to what consumers would like, although the term “two-way” as opposed to “interactive” generates some discussion, as many consumers have difficulty interpreting the distinction. In addition, the use of “cable-ready” still presents a barrier to acceptance.

As the following table shows, the labels offered by the focus group participants working as a committee reflect their preference for designations that offer information

¹ This third label was not included in the NCTA/CEA proposal but was created by NCTA for purposes of the focus groups.

about the differences among the television sets in a simple, understandable, and concise manner.

| Mid-Tech Group | High-Tech Group |
|---------------------------------------|---|
| · Digital TV/Cable-Ready | • Digital Cable-Ready TV |
| · Digital TV/Interactive Cable Box | · Digital Two-Way TV or Digital Interactive TV |
| · Digital TV/Direct Interactive Cable | · Digital Cable-Ready Two-Way TV or Digital Cable-Ready Interactive TV |

Of far more importance than is illustrated by the specific words that consumers use is their clear desire to find labels that convey as much information as possible in relatively few words. The bottom-line preference is for labels that will help consumers keep track of their choices and allow them to make an informed decision.

Conclusion:

Consumers would like their next decision about a new television to be an easy one, but they are learning that it may be more complicated than they would hope. They would like their choices to be clearly labeled in simple terms, in a way that draws their attention to the issues that matter.

These focus groups do not yield recommendations for one set of labels that are the “winners” but they do offer clear guidance for understanding how the labels could be most useful from the consumers’ point of view.

- The labels must be descriptive giving consumers a means for differentiating between the three types of sets.
- The labels must be precise and concise with well chosen words that communicate without overwhelming consumers
- Additional information to assist consumers must be readily available.



Most consumers gain information about their electronics options in the showroom. The information cards provided by retailers are the most referenced source of information. Few consumers ever look at the back of the set, the outside of the box, or booklets packed inside the box before deciding on a new purchase.

