

## **Appendix A**

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

|  |   |                     |
|--|---|---------------------|
| In the Matter of   | ) |                     |
|  | ) |                     |
| Implementation of Section 304 of the<br>Telecommunications Act of 1996 | ) | CS Docket No. 97-80 |
|  | ) |                     |
| Commercial Availability of Navigation Devices                          | ) |                     |

**DECLARATION OF RICHARD D. TREICH**

I, Richard D. Treich, do hereby declare as follows:

1. I am Senior Vice President for Rates & Regulatory Matters for AT&T Broadband.

My business address is: 183 Inverness Drive West; Third Floor; Englewood, Colorado; 80112.

My responsibilities include overseeing AT&T Broadband's compliance with the Commission's rate regulations, including the establishment of monthly lease rates for cable set-top boxes. I am very familiar with the Commission's methodology for calculating monthly lease rates for such equipment (*i.e.*, the FCC Form 1205), and I manage a team of rate specialists at AT&T Broadband that performs such calculations on a regular basis for AT&T Broadband's cable systems throughout the country.

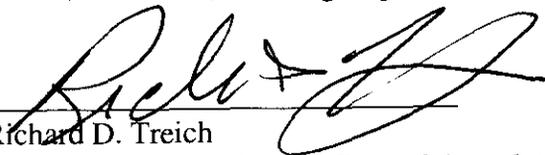
2. The purpose of my declaration is to detail how the additional costs associated with the POD-Host Combination -- using the mid-point of the range for these additional costs identified in the NCTA report to which this declaration is appended, *i.e.*, \$82.50 -- would translate into potential increases in monthly consumer lease rates for such equipment. I conclude that the potential monthly rate increase for consumers would range from approximately \$1.99 (assuming a five-year useful life) to \$2.98 (assuming a three-year useful life) for each POD-Host Combination, assuming the POD and Host are rate regulated.

3. Assuming a *five-year* depreciable life for the equipment, I conclude that the potential monthly rate increase for cable subscribers in Year 3 would be \$1.99 per POD-Host Combination. I arrive at that figure using the following methodology and also assuming the beginning of Year 3 for the net investment. *First*, I divide the \$82.50 in additional acquisition costs for the POD-Host Combination by five (*i.e.*, the depreciation period) to yield an annual depreciation expense of \$16.50. *Second*, I multiply the \$16.50 annual depreciation expense by two to obtain a \$33.00 depreciation reserve for the first two years. *Third*, I subtract the \$33.00 depreciation reserve from the \$82.50 acquisition cost to yield a \$49.50 net rate base at the beginning of Year 3. (The incremental increase in net rate base and monthly lease rate per each POD-Host Combination would be somewhat higher in Years 1 and 2 and somewhat lower in Years 4 and 5.) *Fourth*, I multiply the \$49.50 net rate base by the 15% cost of capital (*i.e.*, 11.25% rate of return + tax gross up) and then add the \$16.50 annual depreciation expense to produce \$23.93 in annual capital costs. *Finally*, I divide the \$23.93 in annual capital costs by 12 to obtain the \$1.99 potential monthly rate increase in Year 3.

4. Assuming a *three-year* depreciable life for the equipment, I conclude that the potential monthly rate increase for consumers in Year 2 would be \$2.98 per POD-Host Combination. I arrive at that figure using the following methodology and also assuming the beginning of Year 2 for the net investment. *First*, I divide the \$82.50 in additional acquisition costs for the POD-Host Combination by three (*i.e.*, the depreciation period) to yield an annual depreciation expense of \$27.50. The \$27.50 equals the depreciation reserve for the first year. *Second*, I subtract the \$27.50 depreciation reserve from the \$82.50 acquisition cost to yield a \$55.00 net rate base at the beginning of Year 2. (The incremental increase in net rate base and monthly lease rate per each POD-Host Combination would be somewhat higher in Year 1 and somewhat lower in Year 3.) *Third*, I multiply the \$55.00 net rate base by the 15% cost of capital

and then add the \$27.50 annual depreciation expense to produce \$35.75 in annual capital costs. *Finally*, I divide the \$35.75 in annual capital costs by 12 to obtain the \$2.98 potential monthly rate increase in Year 2.

5. I declare under penalty of perjury under the laws of the United States that, to the best of my personal knowledge, information, and belief, the foregoing is true and accurate.

  
Richard D. Treich  
Senior Vice President for Rates & Regulatory Matters  
AT&T Broadband

August 1, 2002

## **Appendix B**

November 24, 1999

Dr. Richard R. Green  
President and Chief Executive Officer  
CableLabs  
400 Centennial Parkway  
Louisville, Colorado 80027

Dear Dick:

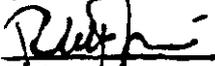
This letter will confirm our complete support of the CableLabs OpenCable project and the development of specifications to ensure interoperability and thus retail availability of set-top boxes and other navigational devices. Our companies commit to supporting the interoperability of our cable systems with set-top boxes, integrated TV receivers, and navigational equipment which comply with the OpenCable specification.

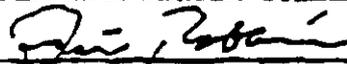
We reaffirm our companies' commitment to place purchase orders to ensure that separate digital security modules are available from our companies by July 2000 in quantities sufficient to meet consumer demand.

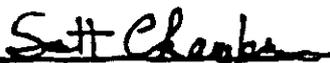
Sincerely,

  
William J. Bresnan  
President and CEO  
Bresnan Comm. Co.

  
Joseph Gans, Sr.  
Chairman of the Board  
The Cable TV Co.

  
Robert Miron  
President  
Advance/Newhouse Comm.

  
Jim O. Robbins  
President and CEO  
Cox Cable Comm., Inc.  
Services

  
Scott Chambers  
President  
Chambers Comm. Corp.

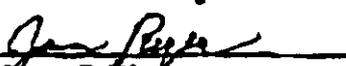
  
Jerry Kent  
President and CEO  
Charter Comm., Inc.

  
Dan Pike  
Sr. VP, Science & Tech.  
Prime Cable Corp.

  
Brian L. Roberts  
President  
Comcast Corp.

  
Joseph Collins  
Chief Executive Officer  
Time Warner Cable

  
Charles M. Lillis  
Chairman and CEO  
MediaOne Group

  
James P. Riggs  
VP, Strategic Planning  
Adelphia Comm. Corp.

  
Daniel Somers  
President and CEO  
AT&T Broadband Internet

cc: Robert Sachs, NCTA

December 21, 2001

Richard R. Green  
President and Chief Executive Officer  
Cable Television Laboratories, Inc.  
400 Centennial Parkway  
Louisville, Colorado 80027-1266

Dear Dick:

In meetings at the FCC, you have been asked how the cable industry intends to carry out its commitment to implement CableLabs Open Cable Applications Platform (OCAP) middleware. With our support, CableLabs has developed specifications for OCAP middleware, which will operate in home devices to permit downloading and execution of applications, such as program guides, that we will provide to our subscribers.

By this letter, we express our intention to take all reasonable steps so that our systems will support CableLabs-certified, OCAP-enabled devices once such equipment becomes commercially available. This commitment includes CableLabs-certified set-top boxes, integrated digital TV (DTV) receivers and other OCAP-enabled devices.

These devices, with appropriate capability, can provide the services we make available to our customers using the set-tops we lease. By being commercially available, these devices will advance Congress's goal to permit a cable customer to purchase equipment, including integrated DTV receivers, instead of leasing a set-top box from the operator in order to receive the services the operator provides.

This commitment is a follow-on from industry-wide commitments to support the interoperability of our systems with devices compliant with the OpenCable specifications adopted prior to adoption of the OCAP specifications. Those devices, which include an OpenCable compliant point-of-deployment (POD)-Host interface, may be made available at retail, are portable, and function on our upgraded digital systems.

The commitment embodied in this letter takes the process of retail availability of navigation devices to the next level, to include CableLabs-certified, OCAP-enabled devices. We trust it will provide you with a more specific commitment from the undersigned companies in communicating the cable industry's position at the FCC regarding these OCAP-enabled devices.

Richard R. Green  
December 21, 2001

Page Two

Sincerely,

/s/ James Rigas

James Rigas, Exec. Vice President  
Adelphia Cable Communications Corp.

/s/ William Schleyer

William Schleyer, President and CEO  
AT&T Broadband

/s/ Carl Vogel

Carl Vogel, President and CEO  
Charter Communications, Inc.

/s/ Brian Roberts

Brian Roberts, President  
Comcast Corporation

/s/ James Robbins

James Robbins, President and CEO  
Cox Communications, Inc.

/s/ Robert Miron

Robert Miron, President  
Advance/Newhouse Communications

/s/ Joseph Collins

Joseph Collins, Chairman and CEO  
AOL Time Warner Interactive Video

/s/ Scott Chambers

Scott Chambers, President  
Chambers Communications Corp.

/s/ Glenn Britt

Glenn Britt, Chairman and CEO  
Time Warner Cable

January 18, 2002

Dr. Richard R. Green  
President and Chief Executive Officer  
Cable Television Laboratories, Inc.  
400 Centennial Parkway  
Louisville, CO 80027-1266

Dear Dick:

We understand that FCC staff has asked MSO's to confirm a previous commitment to support integrated digital television ("DTV") sets that are built to the specifications arising out of the February 22, 2000 technical agreement between the Consumer Electronics Association ("CEA") and the National Cable & Telecommunications Association ("NCTA"). As you know, CableLabs adopted specifications to implement the February 2000 technical agreement to permit the direct connection of integrated DTV sets to cable systems. Those (and related) CableLabs specifications were recently unanimously approved as standards by the Engineering Committee of the Society of Cable Telecommunications Engineers ("SCTE"): SCTE 28 2001 (Formerly DVS/295), *Host-POD Interface*; SCTE 40 2001 (Formerly DVS/313), *Digital Cable Network Interface Standard*; and SCTE 41 2001 (Formerly DVS/301), *POD Copy Protection*.

Consistent with our commitment to the February 2000 agreements, the OpenCable process, and these OpenCable specifications in particular, our companies will support CableLabs-certified, integrated DTV sets built to CableLabs specifications (now embodied in the above SCTE standards) so that those DTV sets can provide the services we make available to our customers using the set-tops we lease to them.

January 18, 2002  
Richard R. Green

Page Two

Sincerely,

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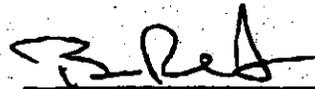
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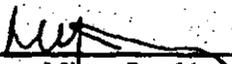
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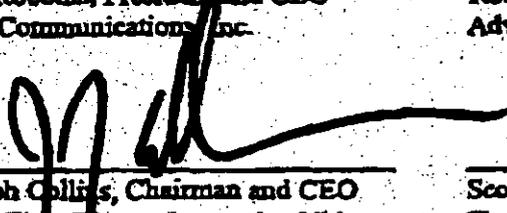
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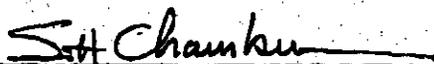
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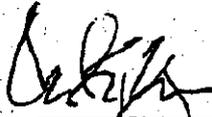
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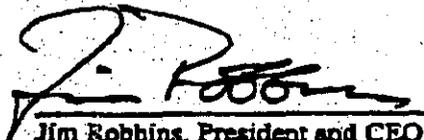
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Chambers Communications Corp.

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Glenn Britt, Chairman and CEO  
Time Warner Cable

## Appendix C



**NCTA**

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

ROBERT SACHS PRESIDENT & CHIEF EXECUTIVE OFFICER

1724 MASSACHUSETTS AVE N.W. WASHINGTON, D.C. 20036

TEL 202.775.3651 FAX 202.775.3695

EX PARTE OR LATE FILED

October 10, 2001 **RECEIVED**

OCT 10 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 8-B201  
Washington, DC 20554

**Re: Commercial Availability of Navigation Devices (CS Docket No. 97-80)**

Dear Chairman Powell:

Over the past several years, cable operators have undertaken various measures to facilitate the retail availability of set-top boxes.

For example, CableLabs developed specifications for a separate security module (a "Point-of Deployment" or "POD" module) as well as for the interface that a converter box needs to accommodate the POD. And cable operators purchased and stocked POD's to provide to customers who purchase converters or other host devices that require a POD to descramble scrambled signals. CableLabs also developed a POD- Host Interface Licensing Agreement ("PHILA") to provide manufacturers with the necessary technology to make PODs work in host devices. Despite the cable industry's efforts, retailers have not placed orders for POD-enabled converter boxes and a retail market has been slow to develop.<sup>1</sup> Among the reasons retailers have given for not purchasing POD-enabled host devices is that such devices would not be technically identical to integrated converter boxes deployed by cable operators nor capable of working from one cable system to another, except where the systems use the same converter boxes.<sup>2</sup>

<sup>1</sup> See Response of the National Cable & Telecommunications Association to the Consumer Electronics Retailers Coalition Ex Parte Submission, CS Docket No. 97-80, filed September 21, 2001 at 3-8. See also Status Report filed by the National Cable Television Association, CS Docket No. 97-80, July 7, 2000.

<sup>2</sup> See Response of the Consumer Electronics Retailers Coalition to the July 7, 2000 Cable Industry Status Report, CS Docket No. 97-80, filed August 2, 2000 at 15 ("MSOs should rely on the same technology that they have devised for their competitors' entry.").

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In a further effort to facilitate the retail availability of set-top boxes and address retailers' technical concerns, the Board of Directors of NCTA has agreed to take the following voluntary actions. We believe that these actions will give consumers additional purchase options without compromising cable security.

- Operators will encourage their set-top box suppliers (Scientific-Atlanta, Motorola, Pioneer, Sony, etc.) to make available their digital set-top boxes – the same boxes with embedded security the manufacturers supply to the cable operator – at retail starting as soon as possible.
- Operators will provision and support these boxes in their systems. (To prevent theft of service, operators could require customers to provide proof of purchase from a retailer and the manufacturer's set-top box serial number.)
- If a subscriber purchases one of these boxes at retail, and then moves outside of the operator's franchise area, then the operator would buy back the box provided it is in good working condition, the operator is still leasing the same box in its franchise area, and the customer provides reasonable evidence that he or she is moving out of the franchise area. Although exact terms will be determined by individual operators, it is contemplated that buy-back would be based upon the operator's wholesale, depreciated cost.
- Manufacturers may make available to consumers some warranty period and retailers may offer some optional extended maintenance period for the boxes. Individual operators may wish to offer maintenance of these boxes as well.

With the industry's deployment of digital set-top boxes, cable operators have increasingly gained confidence about their ability to prevent unauthorized reception of services. Unfortunately, in an analog-only or hybrid analog/digital set-top environment, the theft of service opportunity is still significant and the cable industry loses an estimated \$6.5 billion/year in unrealized revenues. For this reason, the initiative to promote the sale of navigation devices at retail will apply solely to digital-only set-top boxes.

The policies adopted by the NCTA Board represent a major advance towards meeting the goals of Section 629 of the Communications Act – the "commercial availability" provision. They address retailers' major concerns about competing with set-tops leased by the operator, *i.e.*, retailers claim that operator-leased boxes are superior to any digital box with separate security that they can sell. Under this plan, the boxes retailers may sell are identical to the boxes the cable operator leases. This plan also addresses objections to copy protection and certification terms of the CableLabs PHILA, the agreement manufacturers must sign to obtain technology

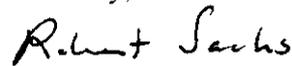
needed to make PODs work in host devices.<sup>3</sup> Under this plan, no PHILA signature is required because there is no POD interface in the integrated boxes at issue.<sup>4</sup>

Finally, the plan addresses retailers' concerns that CableLabs' OpenCable specifications do not produce a "portable" set-top box, *i.e.*, one that can work on any cable system.<sup>5</sup> Under the buy-back feature of NCTA's plan, customers receive "virtual portability" when they move because they are able to return a purchased box to the local cable operator for reasonable compensation.

In addition to making integrated digital set-top boxes available at retail, the cable industry is working with dispatch to develop the OpenCable Application Platform ("OCAP") or "middleware" specifications, which provide a common software environment to make set-top boxes interoperable across cable systems and allow new features to be added electronically. OCAP will enhance the portability of boxes that incorporate interactive functionality. Development of the OCAP specifications is CableLabs' highest priority.

Together the immediate retail availability of integrated set-tops and the development of OCAP specifications that will allow for actual portability should help foster the retail market envisioned by Section 629.

Sincerely,



Robert Sachs  
President & CEO  
National Cable & Telecommunications  
Association

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<sup>3</sup> The Commission essentially endorsed inclusion of copy protection and certification requirements in such an agreement. See Further Notice of Proposed Rulemaking and Declaratory Ruling, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, 15 FCC Rcd. 18199, 18209-12 (¶¶25-32) (2000)(copy protection permitted); Report and Order, 13 FCC Rcd. 14775, 14790 at n.71 (1998)(certification by CableLabs suggested).

<sup>4</sup> To the extent cable operators begin supplying boxes with POD slots, they will only be able to do so when their manufacturers have signed the PHILA or a similar agreement licensing the CableLabs decryption technology.

<sup>5</sup> *This claim is not quite accurate. Boxes built to the current OpenCable specification are more portable than operator-supplied boxes because the former will provide analog video and audio and both scrambled and unscrambled digital video and audio (including pay-per-view service) when used on any cable system supporting OpenCable compliant devices while current operator-supplied boxes can only be used in the system which provides the cable box to the customer.*

Letter to Chairman Powell  
October 10, 2001  
Page 4

cc: Commissioner Kathleen Abernathy  
Commissioner Michael Copps  
Commissioner Kevin Martin  
Magalie R. Salas, Secretary (for inclusion in CS Docket No. 97-80)  
Marsha McBride, Chief of Staff  
Susan Eid, Legal Advisor to Chairman Powell  
Stacey Robinson, Legal Advisor to Commissioner Abernathy  
Susanna Zwerling, Legal Advisor to Commissioner Copps  
Catherine Bohigian, Legal Advisor to Commissioner Martin  
Kenneth Ferree, Chief, Cable Services Bureau  
Tom Horan, Legal Advisor to Chief, Cable Services Bureau  
William Johnson, Deputy Chief, Cable Services Bureau  
Deborah Klein, Division Chief, Consumer Protection & Competition Division, CSB  
Steve Broeckaert, Deputy Chief, Consumer Protection & Competition Division, CSB  
Paul Gallant, Special Advisor, Cable Services Bureau  
Dr. Robert Pepper, Chief, Office of Plans & Policy  
Jonathan Levy, Deputy Chief Economist, Office of Plans & Policy  
Amy Nathan, Senior Counsel, Office of Plans & Policy  
Jonathan Wong, Division Chief, Engineering & Technical Services Division, CSB  
Michael Lance, Deputy Chief, Engineering & Technical Services Division, CSB