



NCTA

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

NEAL M. GOLDBERG GENERAL COUNSEL

1724 MASSACHUSETTS AVE N.W. WASHINGTON, D.C. 20036-1903

TEL: 202.775.3664 FAX: 202.775.3603

September 6, 2002

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

On September 4, 2002, Robert Sachs, President and CEO of the National Cable & Telecommunications Association ("NCTA"), Neal Goldberg, NCTA's General Counsel, and William Check, NCTA's Vice President, Science and Technology, met with Commissioner Michael J. Copps and his Legal Advisor Alexis Johns to discuss issues in the above-referenced proceeding. The discussion reflected issues raised in previous filings NCTA has made with the Commission. Copies of NCTA's June 4, 2002 and August 2, 2002 *ex parte* filings were provided to the Commissioner and Ms. Johns and copies of those filings are attached.

Respectfully submitted,

/s/ Neal M. Goldberg

Neal M. Goldberg

cc: Commissioner Michael J. Copps
Alexis Johns, Legal Advisor, Media & Consumer Protection



NCTA

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

NEAL M. GOLDBERG GENERAL COUNSEL

1724 MASSACHUSETTS AVE N.W. WASHINGTON, D.C. 20036-1903

TEL: 202.775.3664 FAX: 202.775.3603

June 4, 2002

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

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

Dear Ms. Dortch:

This is to notify you that on June 3, 2002, William Check, NCTA's Vice President of Science and Technology, Frank Buono of the law firm Willkie, Farr & Gallagher and I met with William Johnson, Deborah Klein, Mary Beth Murphy, Susan Mort, and Thomas Horan of the Media Bureau to discuss issues in the above-referenced docket.

Our discussion reflected positions NCTA has taken in written submissions in this docket. The attached summary describes the issues discussed.

Respectfully submitted,

/s/ **Neal M. Goldberg**

Neal M. Goldberg

NMG:gml

Attachment

cc: William H. Johnson, Deputy Chief, Media Bureau
Deborah Klein, Chief of Staff, Media Bureau
Mary Beth Murphy, Chief, Policy Division, Media Bureau
Susan Mort, Attorney Advisor, Media Bureau
Thomas Horan, Senior Legal Advisor, Media Bureau

THE 2005 BAN ON INTEGRATED SET-TOP BOXES SHOULD BE ELIMINATED

I. The Cable Industry Has Invested Substantial Resources to Ensure Compliance with the Commission's Commercial Availability Rules and Is Firmly Committed to the Development of a Retail Market for Navigation Devices.

- **The Cable Industry Has Strong Incentives to Facilitate New Retail Distribution Channels.**
 - Cable operators' core business is the sale of services, not the sale or lease of set-top boxes or other cable customer equipment. Because cable operators face vigorous competition from DBS and others, they have every incentive to maximize the equipment options for navigation devices and the number of outlets at which consumers can buy them.
 - Cable operators have a significant incentive to move the capital costs of subscriber equipment (most of which is rate capped) off their books.
 - Cable operators desire multiple suppliers of equipment wherever possible. To the extent more suppliers enter the marketplace for cable customer equipment, operators and consumers benefit from lower prices and a greater diversity of products, features, and functions.
- **The Cable Industry Has Made a Major Investment and a Number of Significant Commitments to Facilitate the Retail Distribution of Navigation Devices.**
 - **Development of Technical Specifications.** Through CableLabs' OpenCable project, cable operators achieved all milestones for implementation of the Commission's digital separate security requirement prior to the July 1, 2000 deadline. The OpenCable specifications allow manufacturers to build retail "host" products comparable in features and functions to those provided by cable operators. The OpenCable process is an open and inclusive process, in which almost 500 organizations, including consumer electronics manufacturers and retailers, participate.
 - **Establishment of Relationships with Consumer Electronics Manufacturers and Retailers.** Cable operators have arrangements for marketing digital cable and Internet services at hundreds of Best Buy and other retail stores. They have also established relationships with leading consumer electronics manufacturers, including Sony, Panasonic, and Pace, to produce set-top boxes that can be made available at retail.
 - **Success of OpenCable's DOCSIS Initiative.** CableLabs has certified over 220 cable modem products from 60 different manufacturers, and cable operators are making extensive use of retail outlets to make cable modem services and equipment more accessible to consumers.
 - **The Cable Industry's OCAP "Middleware" Initiative.** While not mandated by the Commission's rules, OCAP middleware will enhance the portability of OpenCable-compliant devices. The first generation OCAP specification -- OCAP 1.0 -- has been completed and was published on the OpenCable Web site on December 21, 2001. In addition, leading MSOs have formally committed to support CableLabs-certified, OCAP-enabled devices once such devices become commercially available. Further enhancements to the OCAP specification -- for example, the recently published OCAP 2.0 -- are already underway.

- The Cable Industry's Commitment to Allow Retailers to Sell "Integrated" Set-top Boxes. Leading cable operators have voluntarily agreed to encourage set-top box suppliers (e.g., Scientific Atlanta, Motorola, Pioneer, Sony) to make integrated digital set-top boxes available at retail. In addition, the operators agreed to provision and support this equipment in their cable systems and to "buy back" integrated boxes purchased at retail from customers who are moving outside the operator's franchise area.

II. While the Cable Industry Has Dedicated Substantial Resources to the Above-described Retail Initiatives, Retailers Have Consistently Declined to Invest in -- or Commit to Purchase or Distribute -- "Host" or "Integrated" Set-top Boxes.

- Retailers' desire for higher profit margins is the principal impediment to the retail sale of set-top boxes.
 - At least one leading manufacturer built host digital set-tops, using the OpenCable specifications, with functionality comparable to the integrated set-top devices provided by cable operators, but was unsuccessful in persuading retailers to order such devices, despite repeated attempts.
 - As the record indicates, this manufacturer was told that the retailers were not interested in selling "just boxes," a reaction consistent with press reports that have described how certain major national retailers "hope to hold out for a share of on-going service revenues" before agreeing to market digital cable boxes.¹
 - These reports confirm that the principal impediment to the development of a retail marketplace for set-top boxes is the retailers' desire to extract payments from cable operators that will enable them to realize higher profit margins, at the expense of operators and consumers.
 - The retailers' desire to extract a share of cable operator service revenues may be a function of the fact that the markup on competing operator-provided customer equipment (irrespective of whether such equipment utilizes separate security or embedded security) is limited by rate regulation to 11.25%. The retailers apparently find this profit margin unattractive. Rather than seeking cost efficiencies that would improve their margin, however, they have chosen instead to manipulate the regulatory process in an effort to force cable operators to give them a share of the operators' revenues.

¹ See, e.g., "MSOs Tread Carefully Into Retail World: Retailers Want Piece of the Profits, Too," Multichannel News, May 1, 2000 at 121; also see "Scientific Atlanta Readies for Retail of Set-Top Boxes," The Atlanta Constitution, June 28, 2000, at E-1, 9 (quoting statement of Wachovia Securities Industry Analyst George Hunt that "[t]he first thing Circuit City wanted was a portion of the monthly cable bill"); "Bickering Delays Retail Debut of Set-Top Cable Boxes," USA Today, July 25, 2000, at B-1 (quoting statement by RadioShack senior executive stating that "we believe that we deserve a piece of that [cable] revenue stream"); "Pricing Quandary Slows Down Retail Set-Top's Development," Extra/Extra, Nov. 30, 2000, at 10 (noting that major consumer electronics retailers "want to follow the DBS and cell phone business model, where the product is subsidized and the retailers get a nice slice of the monthly revenue.").

- The reasons cited by retailers for their failure to make any investment or commitment in this area are entirely without merit.
- Adequacy of OpenCable Specifications. OpenCable specifications provide a wide variety of manufacturer options. Even without OCAP, a host device may be built that (1) provides access to premium (scrambled) digital services and call-ahead pay-per-view, and (2) using proprietary applications, may provide such services as IPPV. The manufacturer may choose what best suits its business plan. This provides the flexibility to manufacture and retail different devices tailored to the needs of different customers. Indeed, in a recent ex parte filing, CEA agreed that "sufficient standards now exist to enable the manufacture of navigation devices that could be sold at retail."
- PHILA. Three leading set-top box manufacturers (i.e., Scientific-Atlantic, Motorola, and Pace) already have signed the PHILA. The current version of the PHILA is posted on the OpenCable Web site. Moreover, retailer complaints concerning the OpenCable specifications and PHILA do not provide any justification for their refusal to pursue the sale of integrated set-top boxes at retail, in response to the cable industry's voluntary retail sale initiative for such devices.
- Equipment Averaging. Equipment averaging is not an unfair "subsidy," as CERC has alleged. Cable operators may only recover their costs plus 11.25%. Congress specifically authorized pooling of box costs to provide greater pricing flexibility to rate-regulated cable operators in order to facilitate deployment of advanced digital technology. This is like putting new and used boxes in the same cost pool. It has worked very well in facilitating digital deployment. CERC's proposal to expand equipment averaging to require cable operators to subsidize the retailers' provision of equipment to consumers represents yet another blatant attempt to improve retailer profit margins, at the expense of cable companies and consumers. This "retail subsidy" proposal is plainly outside the scope of the statute, which only allows cable operators to aggregate their costs for purposes of setting rates for the equipment they provide to subscribers. Congress clearly did not intend to extend this provision to include set-top equipment purchased and sold by retailers, who are not subject to the rate regulatory constraints imposed on cable operators that led Congress to authorize equipment averaging.

III. The Commission Should Eliminate the 2005 Ban on Integrated Set-top Boxes, in Light of Changed Circumstances, in Order to Avoid Imposing Significant New Costs on Consumers and to Ensure that Cable Subscribers Have a Full Range of Equipment Options.

- The ban would substantially increase equipment costs (and monthly lease prices) and reduce equipment options available to consumers.
- As Chairman Powell has observed, it "is contrary to good public policy to remove from the market a potentially cost-effective choice for consumers." Yet, as Chairman Powell recognized, this is precisely what the ban does.
- The D.C. Circuit has agreed with Chairman Powell: "Consumers might [choose] not to purchase retail devices for perfectly sensible economic reasons -- because, for instance, there are efficiency gains captured in the manufacture of an integrated box that lead it to cost less than the combined cost of a separate security module and a retail device, or because consumers view as too high the transaction cost of seeking a separate ancillary device at retail." General Instrument Corp. v. FCC, 213 F. 3d 724, 731 (D.C. Cir. 2000).

- There is ample record evidence showing the potential cost advantages and other benefits that integrated devices offer to customers. In particular, the record to date shows that a POD-host combination is approximately \$93 more expensive than an integrated device performing the same functions. This potentially would mean an average consumer price increase of between \$2.25 and \$3.36 per month for each leased POD-host combination (assuming both the POD and host are rate regulated), based on a five-year and three-year depreciable life, respectively. The incremental increase in monthly lease price per POD-host combination would be somewhat higher in earlier years of the depreciable life of the equipment and somewhat lower in later years. (The specific calculations for these possible monthly lease increases are set out in the Attachment.)
- The ban would force cable operators and subscribers to bear these added costs, despite the fact that the enhanced portability of such host devices provides no added value to consumers who choose to lease, rather than purchase, their set-top boxes, because those boxes stay within one operator's cable system.
- Even if all boxes are separated into two pieces, this will not eliminate the fundamental obstacle to the retail sale of set-tops noted above, namely, retailers' desire for higher profit margins. Retailers presumably will still be uninterested in selling "just boxes" at the same profit margins they find unattractive today. So, while maintaining the ban will surely saddle operators and consumers with significant additional costs, it is unlikely to spur retail deployment of standalone host devices.
- The ban also would have a significant adverse impact on innovation and competition.
 - Congress made clear that in implementing the commercial availability provisions, the Commission must "avoid actions which could have the effect of freezing or chilling the development of new technologies and services."
 - As Chairman Powell has observed, "[t]he decision to prohibit integrated boxes may deter innovation. The record of this proceeding shows that potential competitors to incumbent cable providers [i.e., cable overbuilders] have been developing integrated boxes with unique functionalities as a way of competing. It is contrary to Section 629 and to good public policy to inhibit this development."
 - The record shows that manufacturers in fact have developed new integrated products with innovative new features, including some products (such as Motorola's DCP500 product line) designed specifically to meet the needs of retail customers. Yet, as Chairman Powell has further observed, the ban on integrated devices forces cable operators to make procurement and technology decisions "so as to avoid the potential for stranded investment, not on the basis of what might be best for their customers." For this reason as well, the ban should be removed.
- The Commission's prior rationale for the integration ban no longer applies.
 - The rationale for the ban was based on the assumption that integrated devices could continue to be available only through the cable operator. The Commission explicitly justified its decision to ban integrated devices on the basis that "[a]llowing MVPDs the advantage of being the only entity offering bundled boxes [i.e., integrated boxes with embedded security] could adversely affect the development of this equipment market,"

and that accordingly "the prohibition on integrated boxes allows for equal competition in the marketplace."

- Given that the cable industry has now committed to allow integrated devices to be made available to consumers through independent retail outlets, applying the Commission's own reasoning, the prohibition can no longer be justified, particularly given the significant added costs which maintenance of the ban would impose on consumers.
- Indeed, the ability of retailers to purchase and sell the very same integrated devices that are provided by cable operators means that cable operators should now be treated like DBS operators, who operate under this same model and who are exempt from the ban.
- The rationale for the ban is further undermined by the cable industry's (1) demonstrated and ongoing commitment to OpenCable's POD-host and middleware initiatives, and (2) increasingly strong economic incentives (in the vigorously competitive MVPD marketplace) to develop retail distribution channels for the equipment used to access their services.
- Neither retailers nor consumer electronics manufacturers would be disadvantaged by the continued provision of integrated set-tops by cable operators.
 - The cable industry's commitment to support the retail sale of integrated devices answers the retailers' claim that operator-leased integrated devices are superior to digital host devices with separate security, by allowing retailers to sell integrated devices that are identical to those the operator leases. This commitment also addresses objections raised with regard to the copy protection and certification terms of the PHILA, which are inapplicable, since there is no POD interface in these integrated devices requiring the signing of the PHILA. In addition, the plan provides subscribers who purchase integrated devices at retail with "virtual portability," as a result of the "buy-back" provisions of the plan, thereby addressing retailer concerns in this area as well.
 - Retailers and consumer electronics manufacturers seeking to build and market host devices also have significant opportunities to achieve integration efficiencies, in the form of reduced costs and/or increased functionality, by incorporating host navigation device functions into other consumer electronics equipment (e.g., TVs, DVDs, VCRs), which may make such products appealing to consumers.
 - Retailers can achieve additional efficiencies and further enhance the commercial viability of their product offerings through joint marketing and bundled pricing (e.g., offering a free DVD player as an inducement to purchase a digital TV and set-top box).
- The best policy is to ensure that consumers can choose the option that best fits their preferences. While some consumers may prefer the particular features in an integrated device, which might be offered by a cable operator or a retailer, others may prefer the different features offered in a host device, which also might be offered either by a cable operator or a retailer. This is why Chairman Powell has said that the market should be allowed to play this out.

ATTACHMENT

Calculation of Potential Monthly Consumer Price Increase for POD-Host Combination

Assuming Five-Year Depreciable Life

- Acquisition cost = \$93 (i.e., cost of POD (\$78) + cost of host interface (\$15))
- 15% cost of capital (i.e., 11.25% rate of return + tax gross up)
- \$18.60 depreciation expense (i.e., $\$93 \div 5$ years)
- \$55.80 net rate base at beginning of Year 3 (i.e., \$93 acquisition cost - \$37.20 depreciation expense for first 2 years)
 - **NOTE:** For purposes of illustration, we have assumed the beginning of Year 3 for the net investment. The incremental increase in net rate base and monthly lease price per POD-host combination would be somewhat higher in Years 1 and 2 and somewhat lower in Years 4 and 5.
- \$26.97 annual capital costs (i.e., \$55.80 net rate base x 15% cost of capital + \$18.60 depreciation expense)
- \$2.25 possible monthly price increase in Year 3 (i.e., $\$26.97 \div 12$)

Assuming Three-Year Depreciable Life

- Acquisition cost = \$93 (i.e., cost of POD (\$78) + cost of host interface (\$15))
- 15% cost of capital (i.e., 11.25% rate of return + tax gross up)
- \$31 depreciation expense (i.e., $\$93 \div 3$ years)
- \$62 net rate base at beginning of Year 2 (i.e., \$93 acquisition cost - \$31 depreciation expense)
 - **NOTE:** For purposes of illustration, we have assumed the beginning of Year 2 for the net investment. The incremental increase in net rate base and monthly lease price per POD-host combination would be somewhat higher in Year 1 and somewhat lower in Year 3.
- \$40.30 annual capital costs (i.e., \$62 net rate base x 15% cost of capital + \$31 depreciation expense for first year)
- \$3.36 possible monthly price increase in Year 2 (i.e., $\$40.30 \div 12$)



NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

NEAL M. GOLDBERG GENERAL COUNSEL

1724 MASSACHUSETTS AVE N.W. WASHINGTON, D.C. 20036-1903

TEL: 202.775.3664 FAX: 202.775.3603

August 2, 2002

EX PARTE

DELIVERED BY HAND

W. Kenneth Ferree
Chief, Media Bureau
Federal Communications Commission
445 12th Street, SW, Rm. 3-C740
Washington, DC 20554

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

Dear Mr. Ferree:

On Tuesday, June 4, 2002, representatives of the National Cable & Telecommunications Association ("NCTA") met with Media Bureau staff to discuss the FCC rule prohibiting cable operators from providing to consumers any new set-top boxes with embedded security as of January 1, 2005 (the "integration ban"). Under the FCC rule, after January 1, 2005, cable operators would no longer be able to place in service new set-top boxes that perform both conditional access (*i.e.*, security) and other functions in a single integrated device. Rather they would be required to offer *two* pieces of equipment to all of their customers: (1) a separate security "Point-of-Deployment" module (*i.e.*, a "POD") and (2) a device performing non-security functions that would connect to, and interoperate with, the POD (*i.e.*, a "Host").

At the June 4, 2002 meeting, NCTA explained that it would be in the public interest to eliminate the January 1, 2005 ban on cable operator provision of integrated set-top boxes because, based on the data in the record, the ban would impose significant additional costs on cable consumers without providing any offsetting benefits.¹ We also noted that the Commission's stated rationale for the rule no longer was valid because, among other things, the cable industry's Retail Set-Top Box Initiative allows *the same integrated set-top boxes* that operators lease to their consumers to be made available to customers at retail.

¹ See Ex Parte Letter from Neal Goldberg, General Counsel, NCTA, to Marlene Dortch, Secretary, FCC, filed in CS Dkt. No. 97-80 (June 4, 2002) ("June 4 Ex Parte").

During the meeting, Media Bureau staff observed that the cost data in the record had been submitted over 20 months ago and asked if we had more recent data. The attached Report provides current cost data which supports the cost-benefit analysis discussed at the June 4, 2002 meeting and reinforces the argument for elimination of the integration ban.

Specifically, the Report demonstrates that the combination of a separate security POD and a Host device ("POD-Host Combination") would cost a cable operator approximately \$72 to \$93 more than an integrated set-top box with the same functionality. The additional cost to the operator, in turn, translates into a potential increase in monthly regulated consumer equipment lease rates of approximately *\$1.99 to \$2.98 for each POD-Host Combination deployed in the consumer's home*. Accordingly, on an industry-wide basis, the integration ban's mandate that only POD-Host Combinations may be placed in service after January 1, 2005 threatens to impose billions of dollars of additional and unnecessary costs on consumers.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Neal M. Goldberg

Enclosure

cc: Marlene Dortch, Secretary (for inclusion in CS Docket No. 97-80)
Chairman Michael K. Powell
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
William Johnson, Deputy Chief, Media Bureau
Rick Chessen, Associate Bureau Chief, Media Bureau
Kyle Dixon, Deputy Bureau Chief, Media Bureau
Deborah Klein, Chief of Staff, Media Bureau
Mary Beth Murphy, Chief, Policy Division, Media Bureau
Tom Horan, Legal Advisor to Chief, Media Bureau
Susan Mort, Attorney Advisor, Media Bureau
John Wong, Chief, Engineering Division, Media Bureau
Michael Lance, Deputy Chief, Engineering Division, Media Bureau
Bruce Franca, Deputy Chief, Office of Engineering & Technology
Robert Pepper, Chief, Office of Plans and Policy
Amy Nathan, Senior Legal Counsel, Office of Plans and Policy
Jonathan Levy, Deputy Chief Economist, Office of Plans and Policy

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

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

**REPORT OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
REGARDING THE SIGNIFICANT COSTS TO CONSUMERS
ARISING FROM THE 2005 BAN ON INTEGRATED SET-TOP BOXES**

Daniel L. Brenner
Neal M. Goldberg
Loretta P. Polk

William A. Check, Ph.D.
Vice President, Science &
Technology

Andy Scott
Director of Engineering

Counsel for the National Cable &
Telecommunications Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 775-3664

August 2, 2002

TABLE OF CONTENTS

	Page No.
I. INTRODUCTION AND SUMMARY	1
II. A POD-HOST COMBINATION WILL COST CABLE OPERATORS APPROXIMATELY \$72 TO \$93 MORE THAN AN INTEGRATED SET-TOP BOX WITH THE SAME FUNCTIONALITY, RESULTING IN A POTENTIAL INCREASE IN MONTHLY SUBSCRIBER EQUIPMENT RATES OF BETWEEN \$1.99 AND \$2.98 FOR EACH POD-HOST COMBINATION	4
III. THE SUBSTANTIAL ADDED COSTS THAT WOULD BE IMPOSED BY THE INTEGRATION BAN FAR OUTWEIGH THE PURPORTED BENEFITS CITED BY PROPONENTS OF THE BAN	8
IV. IN LIGHT OF CHANGED CIRCUMSTANCES, THE COMMISSION'S RATIONALE FOR THE INTEGRATION BAN NO LONGER EXISTS	14
CONCLUSION	17

Appendix A - Declaration of Richard D. Treich, Senior Vice President for Rates & Regulatory Matters, AT&T Broadband

Appendix B - Correspondence Confirming Cable Operators' Commitment to Support OpenCable-Compliant Navigation Devices

Appendix C - October 10, 2001 *Ex Parte* Letter Describing NCTA Retail Set-Top Initiative

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

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

**REPORT OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
REGARDING THE SIGNIFICANT COSTS TO CONSUMERS
ARISING FROM THE 2005 BAN ON INTEGRATED SET-TOP BOXES**

I. INTRODUCTION AND SUMMARY

The National Cable & Telecommunications Association (“NCTA”) submits the following report in the above-captioned proceeding, in response to questions raised at a recent *ex parte* meeting between NCTA representatives and Media Bureau staff regarding the Commission’s commercial availability rules.¹ At the meeting, NCTA explained that it would be in the public interest to eliminate the January 1, 2005 ban on integrated set-top boxes (the “integration ban”) because the ban would impose significant additional costs on cable customers without providing

¹ See *Ex Parte* Letter from Neal Goldberg, General Counsel, NCTA, to Marlene Dortch, Secretary, FCC, filed in CS Dkt. No. 97-80 (June 4, 2002) (“June 4 *Ex Parte*”).

any offsetting benefits.² This report, together with the attached declaration, provides further evidence in support of this view.³

² Under the integration ban, after January 1, 2005, cable operators would no longer be able to place in service new set-top boxes that perform both conditional access (*i.e.*, security) and other functions in a single integrated device. *See* 47 C.F.R. § 76.1204(a)(1). Rather, they would be required to offer *two* pieces of equipment to all of their customers: (1) a separate security "Point-of-Deployment" module (*i.e.*, a "POD") and (2) a device performing non-security functions that would connect to, and interoperate with, the POD (*i.e.*, a "Host"). Customers could obtain the Host device either from the cable operator or from a retailer or other vendor that decided to sell such devices. CableLabs, the research and development consortium for the cable industry, through its OpenCable initiative, has developed specifications for the POD-Host interface to enable the interconnection and interoperation of the POD and Host. These specifications have been adopted as U.S. standards by the Society of Cable Telecommunications Engineers ("SCTE"), an ANSI-accredited standards-setting organization. Through the efforts of CableLabs, cable operators, and manufacturers, the cable industry met the FCC's July, 2000 deadline to have PODs available for use in Host devices. *See* 47 C.F.R. 76.1204(a) and (e).

³ As detailed in the prior filings of NCTA and others in this proceeding, there are numerous other reasons why the integration ban does not serve the interests of consumers. *See, e.g.*, NCTA Comments, filed in CS Dkt. No. 97-80, at 30-32 (Nov. 15, 2000) ("NCTA Retail Sale Comments") (integration ban reduces competition, consumer choice, and product innovation); AT&T Comments, filed in CS Dkt. No. 97-80, at 26-27 (Nov. 15, 2000) ("AT&T Retail Sale Comments") (same); NCTA Reply Comments, filed in CS Dkt. No. 97-80, at 26-27 (Dec. 18, 2000) ("NCTA Retail Sale Reply Comments") (same); NCTA *Ex Parte* Response To CERC, filed in CS Dkt. No. 97-80, at 20 (Sept. 21, 2001) ("NCTA Response To CERC") (same); NCTA Petition for Expedited Reconsideration, filed in CS Dkt. No. 97-80, at 22-23 (Aug. 14, 1998) (integration ban prohibits cable operators from continuing to offer embedded security devices, which embody the best means of protecting signal security; "[b]ecause cable signal theft imposes a cost burden not only on cable operators and programmers, but also on innocent subscribers, anything that enhances security consistent with the statute is in the public interest"). *See also* Comments of General Instrument Corporation, filed in CS Docket No. 97-80 (May 16, 1997) at 60, Appendix B ("Primer on Security Methods and Physical Implementation of Security") (providing a technical description of the various types of analog and digital security technologies), Appendix D (GI white paper discussing the technical and security problems with smart card technology and the superiority of embedded security systems).

NCTA's positions on the key issues in the pending commercial availability proceeding, including the elimination of the integration ban, are summarized in the June 4 *Ex Parte* cited above. NCTA herein focuses primarily on providing additional evidence regarding the likely cost impact of the integration ban on consumers.

Specifically, in response to questions raised by the Commission staff, NCTA conducted an inquiry which shows that the combination of a separate security POD and a Host device ("POD-Host Combination") would cost a cable operator approximately \$72 to \$93 more than an integrated set-top box with the same functionality. The additional cost to the operator, in turn, translates into a potential increase in monthly regulated consumer equipment lease rates of approximately *\$1.99 to \$2.98 for each POD-Host Combination deployed in the consumer's home*. Accordingly, on an industry-wide basis, the integration ban's mandate that only POD-Host Combinations may be placed in service after January 1, 2005 threatens to impose billions of dollars of additional costs on consumers.

Moreover, circumstances have changed since the Commission first adopted the ban. Most notably, the fact that integrated digital set-top boxes do not present the same theft-of-service threat as analog devices has enabled the cable industry to support the retail sale of integrated set-top boxes identical to those provided by cable operators. This development eliminates the rationale for the ban.

Given the significant additional cost that would be imposed on consumers as a result of the ban, the lack of a demonstrable public interest benefit that could reasonably be cited as outweighing these costs, and the fact that the Commission's prior rationale for the ban no longer exists, NCTA respectfully urges the Commission to eliminate the integration ban.

II. A POD-HOST COMBINATION WILL COST CABLE OPERATORS APPROXIMATELY \$72 TO \$93 MORE THAN AN INTEGRATED SET-TOP BOX WITH THE SAME FUNCTIONALITY, RESULTING IN A POTENTIAL INCREASE IN MONTHLY SUBSCRIBER EQUIPMENT RATES OF BETWEEN \$1.99 AND \$2.98 FOR EACH POD-HOST COMBINATION.

As NCTA previously has shown, implementation of the integration ban would substantially increase cable subscriber equipment costs and significantly reduce the equipment options available to consumers.⁴ Both Chairman Powell and the D.C. Circuit also have previously raised concern that the ban would have this effect. In particular, in discussing the impact of the Commission's decision adopting the ban, Chairman Powell observed that it "is contrary to good public policy to remove from the market a potentially cost-effective choice for consumers."⁵ Yet, as Chairman Powell recognized, this is precisely what the ban does.⁶ The D.C. Circuit has similarly observed:

Consumers might [choose] not to purchase retail devices for perfectly sensible economic reasons -- because, for instance, there are efficiency gains captured in the manufacture of an integrated box that lead it to cost less than the combined cost of a separate security module and a retail

⁴ See NCTA filings cited in n. 3, *supra*.

⁵ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Order on Reconsideration, 14 FCC Rcd. 7596, 7632 (1999) ("Reconsideration Order") (Statement of Commissioner Powell).

⁶ *See id.* ("It would be more practical to allow operators to deploy integrated boxes that may well be less costly and provide greater security for the system. The benefits of allowing operators to use such equipment would redound to consumers, giving them more equipment options at potentially lower prices.") *See also In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd. 14775, 14848 (1998) ("Report and Order") (Statement of Commissioner Powell) ("I fear that the majority decision today denies a cost effective choice for consumers. It is quite plausible to me that the 'impediment' to switching to retail may in fact be a consumer preference for distributor-supplied boxes! I see no reason to attempt to control consumer preferences.").

device, or because consumers view as too high the transaction cost of seeking a separate ancillary device at retail.⁷

Comments previously submitted by cable operators and equipment vendors in this proceeding have included cost estimates indicating that a POD-Host Combination is significantly more expensive than an integrated device performing the same functions.⁸ In response to questions raised by Media Bureau staff and in light of the fact that the most recent cost estimates currently in the record were submitted over 20 months ago, NCTA submits the following information, which reflect the results of an inquiry and analysis undertaken by NCTA, in an effort to refresh and enhance the record with respect to the cost issue.

The cost information collected by NCTA is based on consultations with Motorola and Scientific-Atlanta, leading manufacturers that are familiar with the POD-Host specifications developed through the OpenCable process, and that have developed POD and Host devices designed to meet those specifications. On the basis of these discussions, NCTA's staff has confirmed that there are a variety of technical and engineering factors contributing to the additional cost of designing and manufacturing a POD-Host Combination, as compared with an integrated set-top device. Specifically, production of a POD-Host Combination requires not only the inclusion of a new interface and physically separate security module that is not needed with integrated devices, but also the design and implementation of complex engineering solutions for *both* sides of this interface as opposed to a *single* set of solutions for an integrated device.

⁷ *General Instrument Corp. v. FCC*, 213 F. 3d 724, 731 (D.C. Cir. 2000).

⁸ *See, e.g.*, AT&T Retail Sale Comments at 19; Motorola Comments, filed in CS Dkt. No. 97-80, at 12-17, 19-20 (Nov. 15, 2000) ("Motorola Retail Sale Comments").

For example, the POD and Host require their own separate central processing units, memory, firmware, and software. In addition, there are new PCMCIA-compliant connectors and physical packaging for the interface and command and signalling protocols that are not required when security and non-security functionality reside in a single integrated unit. Moreover, separate copy protection encryption/decryption functionality in *both* the POD *and* Host is necessary to ensure that encrypted programming is secure as it passes across the POD-Host interface. The cost estimates provided by the manufacturers indicate that, as a result of all of these factors, a POD-Host Combination will cost cable operators approximately \$72 to \$93 more than an integrated set-top box with the same functionality.⁹

The attached declaration, prepared by Richard D. Treich, Senior Vice President for Rates & Regulatory Matters at AT&T Broadband, details the potential adverse impact which the added costs to cable operators associated with the POD-Host Combination would have on consumers' regulated monthly lease rates for such equipment. Using the mid-point of the above-described range of additional costs (*i.e.*, \$82.50),¹⁰ Mr. Treich separately calculates the potential increase in monthly customer lease rates at or near the mid-point of a five-year and three-year depreciation

⁹ The manufacturers' estimates of these additional costs were calculated based on volume purchases of integrated boxes and POD-Host Combinations. Given the dynamics of the marketplace, the actual per unit cost incurred by a cable operator in connection with a particular purchase of integrated boxes or POD-Host Combinations will vary based on the specific nature of the product, the volume purchased, and other factors. The information provided to NCTA by the manufacturers also indicates that, as customer equipment becomes more complex and multi-functional in order to provide new and converging video and non-video services, separating security from the set-top box could result in even greater additional costs to the cable operator for the POD-Host Combination.

¹⁰ The mid-point of the range of additional costs identified above is calculated as follows:
 $(\$72 + \$93) \div 2 = \$82.50$.

cycle for the POD-Host Combination.¹¹ Based on these calculations, Mr. Treich concludes that the potential monthly rate increase for consumers would range from approximately \$1.99 (in the third year of a five-year depreciation cycle) to \$2.98 (in the second year of a three-year depreciation cycle) for *each* POD-Host Combination.¹² Viewed on an industry-wide basis, the integration ban threatens to impose billions of dollars in added costs on consumers.¹³

¹¹ More specifically, under the first scenario, Mr. Treich calculates the potential regulated monthly rate increase at the mid-point of a five-year depreciation cycle for the POD-Host Combination (*i.e.*, the beginning of Year 3), and, under the second scenario, at the beginning of Year 2 of a three-year depreciation cycle. Calculations were performed at or near the mid-point of the depreciation cycle and using the mid-point of the additional cost range in order to provide a representative view of the potential increase in monthly lease rates for cable customer equipment. However, as Mr. Treich points out, the potential monthly rate increase for each POD-Host Combination would be somewhat higher in the years *before* the mid-point in the equipment's depreciable life and somewhat lower in the years *after* the mid-point. *See* Appendix A, Declaration of Richard D. Treich, Senior Vice President for Rates & Regulatory Matters, AT&T Broadband at ¶¶ 3 and 4.

¹² *See id.* at ¶¶ 2-4. Thus, a cable subscriber who uses a POD-Host Combination in the living room and two bedrooms would face a potential monthly rate increase of \$5.97 to \$8.94 per month above what he/she currently pays to lease three integrated digital set-top boxes, while receiving no additional benefit.

¹³ There will be approximately 32.1 million integrated digital set-top boxes deployed in cable subscriber homes by the end of 2002. *See* Kagan World Media, *Broadband Technology*, April 12, 2002, at 1. While the ban does not require the immediate replacement of all existing integrated set-top boxes as of January 1, 2005, once these boxes are eventually replaced by POD-Host Combinations as a result of the ban, the total additional wholesale cost of these replacements, which ultimately will be borne by consumers, would be over \$2.6 billion (*i.e.*, 32.1 million boxes times \$82.50, the mid-point of the range of additional costs for each POD-Host Combination identified above). This figure does not even account for the significant additional cost impact on consumers going forward as *new* POD-Host Combinations are deployed.

III. THE SUBSTANTIAL ADDED COSTS THAT WOULD BE IMPOSED BY THE INTEGRATION BAN FAR OUTWEIGH THE PURPORTED BENEFITS CITED BY PROPONENTS OF THE BAN.

This additional evidence makes it even clearer that the integration ban disserves the very purpose of Section 629, the "commercial availability" provision of the Communications Act. As the D.C. Circuit has recognized, if consumers choose not to purchase Host devices at retail for "perfectly sensible economic reasons," the integration ban "does nothing more than deny the most cost-effective product choice to consumers -- an ironic outcome for an order implementing 'one of the most pro-consumer, pro-competitive provisions of the Telecom Act.'"¹⁴

Clearly, the Commission should give substantial weight to this significant cost burden as it revisits the appropriateness of retaining the integration ban, particularly when it has specifically invited comment on this very issue.¹⁵ This would be fully consistent with the approach the Commission has taken with respect to cost-benefit assessments in other contexts. For example, in its *Computer III* rulemaking, the Commission eliminated the separate affiliate requirement for telephone companies that provided information services, after weighing the costs and benefits of the rule.¹⁶ In particular, the Commission concluded that "relative to nonstructural safeguards, the structural separation requirements impose significant costs on the public in

¹⁴ *General Instrument Corp.*, 213 F.3d at 731-32 (quoting statement of Commissioner Ness).

¹⁵ *See In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Further Notice of Proposed Rulemaking, 15 FCC Rcd. 18199, 18203(¶ 11) (2000) (inviting comment on the "total cost differential . . . between an integrated box and a host/POD combination").

¹⁶ *See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Report and Order, 104 FCC 2d. 958, 1002-1012 (¶¶ 78-99) (1986).

decreased efficiency and innovation that substantially outweigh their benefits.”¹⁷ Similarly, in the wireless context, the Commission utilized cost-benefit analyses in deciding to exclude paging companies from number portability mandates¹⁸ and in declining to implement the use of 1 or 0 at the beginning of the exchange code.¹⁹ The Chairman and other current members of the Commission also have commented individually on the value of and need for more rigorous cost-benefit analyses in the rulemaking process.²⁰

¹⁷ *Id.* ¶ 3. See also *id.* ¶ 79 (noting that the rule “effectively prohibits the offering of all enhanced services that could be efficiently integrated or collocated [with the phone company’s basic services], but cannot be offered on a cost-effective basis subject to structural separation”).

¹⁸ See *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8352, 8433 (¶ 156 n.451) (1996) (“Because of the technical hurdles faced by paging and other messaging service providers, the minimal impact that paging... [has] on local exchange competition, and the competitive nature of paging... we conclude that the costs to paging companies to upgrade their networks to accommodate either interim or long-term number portability solutions, estimated at \$30 million by one carrier, outweigh the competitive benefits derived from service provider portability”).

¹⁹ See *In the Matter of Numbering Resource Optimization; Petition for Declaratory Ruling and Request For Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, Second Report and Order, 16 FCC Rcd. 306, 352-353 (¶ 106) (2000) (concluding that the incremental costs involved outweighed any benefits that would be gained by making more numbers available for use by the public). See also *In the Matter of Amendments to Parts 1, 2, 27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, Report and Order, 17 FCC Rcd. 9980, 10032 (¶ 130) (2002) (establishing less stringent out-of-band emission limits for the 2385-2390 MHz band “in consideration of the potential cost or service implications a stricter technical standard would impose on the development of mobile operations in this band”). Likewise, in its pending cable modem service proceeding, the Commission has invited comments on the costs and benefits associated with imposing a multiple ISP requirement on cable operators. See *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Notice of Proposed Rulemaking, 17 FCC Rcd. 4798, 4845-4846 (¶¶ 88-91) (2002).

²⁰ See, e.g., Commissioner Michael Powell, Remarks to the Federal Communications Bar Association, June 15, 1999, Chicago, IL (“[W]e should carefully assess the costs of regulation, (footnote continued...)”).

The enormous costs that would be imposed on consumers by the integration ban are particularly troublesome, given that the asserted benefits of the ban are wholly speculative. For example, proponents of the integration ban cite enhanced portability of Host devices as a principal consumer benefit.²¹ Yet, the integration ban would force cable operators and *all* cable subscribers to bear the added costs associated with the POD-Host Combination, despite the fact that the enhanced portability of Host devices provides *no* added value to subscribers who choose

(... footnote continued)

including direct costs, indirect costs and opportunity costs. It is not difficult to identify a problem and suggest the answer in terms of a general rule or provision of law. In so doing, however, it is easy to ignore the enormous costs and complexities of trying to actually craft and implement rules that are clear, effective and efficient."); Separate Statement of Commissioner Michael Copps, *In the Matter of Communications Assistance for Law Enforcement Act*, Order on Remand, 17 FCC Rcd. 6896 (2002) (expressing concern that "CALEA-related costs for these government mandates will be high for residential customers and wireless providers, especially for rural providers"); Statement of Commissioner Kathleen Abernathy, Dissenting in Part, *In the Matter of Verizon Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, WT Docket No. 01-184, CC Docket No. 95-116, Memorandum Opinion and Order, FCC No. 02-215 (released July 26, 2002) ("[w]e should resist substituting our judgment for the market's judgment of how best to serve consumers. . . . Today, I find little record support for the conclusion that consumers would readily prefer LNP to better coverage, lower prices, or more innovation services. Capital is a zero sum game; resources spent on this mandate in a competitive market will have an impact on other products and services that benefit consumers, including price, coverage, innovation and other mandates such as E911."); Commissioner Kevin J. Martin, Address to the Media Institute, Dec. 11, 2001, Washington, D.C. ("In the past, the Commission has used prophylactic rules in its application of media ownership restrictions. The costs and benefits of such structural rules, however, need to be re-examined to determine whether prophylactic guidelines ruling media ownership continue to be the best way to preserve the public interest."). Other federal agencies and departments increasingly incorporate cost-benefit analyses in their rulemaking proceedings as well. See Rebecca Adams, *Regulating the Rule-Makers: John Graham at OIRA*, 60 CQ Weekly 520, 525 (2002) (describing Administration efforts to require federal departments to conduct cost-benefit analysis in rulemaking proceedings).

²¹ See, e.g., Consumer Electronics Retailers Coalition Reply to the NCTA Letter as to "Retail Set-Top Initiative" and to the NCTA Response to CERC Status Report "J2K Plus 1," filed in Docket No. 97-80 (November 6, 2001) at 7 (arguing that additional regulation is required to assure "true national portability" of navigation devices).

to *lease*, rather than purchase, their set-top boxes, because those boxes stay within one operator's cable system.

To the extent that consumers may wish to purchase OpenCable-compliant portable Host devices at retail outlets, the cable industry is fully committed to giving them that option.

Leading MSOs have made explicit on a number of occasions over the past several years their commitment to support the interconnection and use of OpenCable-compliant Host devices purchased at retail.²² Moreover, MSOs also have agreed to encourage their set-top box suppliers to make the same *integrated* set-top boxes they provide to the MSOs available through retail outlets, and have committed to provision and support these boxes in their systems, thereby giving consumers yet another option for obtaining cable customer equipment.²³

²² See Letter from major cable MSO executives to Dr. Richard R. Green, President and CEO, CableLabs (Nov. 24, 1999) (confirming MSOs' "complete support" of CableLabs' OpenCable project and commitment to supporting the interoperability of their cable systems with set-top boxes, integrated TV receivers, and other navigation devices which comply with OpenCable specifications). See also *Ex Parte* Letter from William A. Check, Ph.D., Vice President, Science & Technology, National Cable & Telecommunications Association, to Magalie R. Salas, Secretary, Federal Communications Commission, filed in PP Docket No. 00-67 (Dec. 26, 2001), appending December 21, 2001 letter from leading cable MSO executives to Richard R. Green, President and CEO, CableLabs (expressing MSOs' intention to take all reasonable steps to ensure that their cable systems will support CableLabs-certified, OCAP-enabled devices); Letter from William A. Check, Ph.D., Vice President, Science & Technology, NCTA, to Rick Chessen, Associate Bureau Chief, Mass Media Bureau, FCC, filed in PP Docket No. 00-67 (Feb. 28, 2002), appending Letter from MSO members of CableLabs Executive Committee to Dr. Richard R. Green, President and CEO, CableLabs (Jan. 18, 2002) (reaffirming MSOs' commitment to support CableLabs-certified integrated digital television sets, so that such devices can provide access to services that are made available to cable subscribers using MSO-leased set-top boxes). Copies of each of these MSO letters are attached in Appendix B hereto. These letters make it clear that cable operators are fully committed to taking the steps necessary to enable consumers purchasing OpenCable-compliant Host devices at retail to interconnect and use such devices to access operator-provided services.

²³ See *Ex Parte* Letter from Robert Sachs, President and Chief Executive Officer, National Cable & Telecommunications Association to The Honorable Michael K. Powell, Chairman,
(footnote continued...)

In contrast, retaining the integration ban does nothing to enhance consumer choice, but instead will prohibit cable operators from placing any new integrated set-top boxes in service after January 1, 2005, despite the fact that they are a more secure and less expensive option, which may be better suited to meet the individual needs and preferences of certain subscribers. Indeed, by imposing significant additional costs with no offsetting benefit, the ban is likely to have a significant negative impact on the ability and willingness of existing and potential cable subscribers to reap the benefits of innovative new digital cable services. Stated another way, the ban will impair, rather than promote, the DTV transition, which the cable industry has committed to support, in response to Chairman Powell's voluntary DTV transition plan, by taking immediate steps that include: 1) placing orders for integrated high-definition (HD) set-top boxes with digital connectors and making these boxes available for lease by subscribers, and 2) consistent with NCTA's Retail Set-Top Box Initiative, supporting the interconnection and use of integrated HD set-tops purchased at retail outlets.²⁴

Nor will retention of the integration ban make it any more likely that retailers will embrace the retail sale of cable set-top boxes. As NCTA has previously demonstrated, to the extent there is an impediment slowing development of a retail marketplace for set-top boxes, it is

(... footnote continued)

FCC, filed in CS Docket No. 97-80 (October 10, 2001) ("NCTA Retail Set-Top Box Initiative"). A copy of this letter is attached as Appendix C hereto.

²⁴ See Letter from Robert Sachs, President and CEO, NCTA to the Honorable Michael K. Powell, Chairman, FCC (May 1, 2002) at 2 (conveying commitments made by the ten largest cable MSOs in response to Chairman Powell's call for voluntary industry action in specific areas, described in the Chairman's April 4, 2002 proposal to speed the digital television transition, which, among other things, urged the industry to provide cable subscribers the option of leasing or purchasing a single high-definition set-top box that includes digital connectors).

the retailers' desire to pursue a more favorable business model for their sale of navigation devices. More specifically, it appears that the retailers' desire for higher profit margins on set-top boxes -- which they seek to realize by forcing cable operators to assign them a portion of the operators' revenues from cable services provided to subscribers who obtain cable customer equipment at retail -- is at the crux of their unwillingness to commit to the purchase and sale to consumers of OpenCable Host products or integrated set-top devices. Indeed, the record shows that manufacturers who have approached retailers regarding the possible purchase of OpenCable Host boxes repeatedly have been rebuffed by retailers who reportedly were not interested in selling "just boxes."²⁵ This conclusion is confirmed by numerous press reports describing how retailers "hope to hold out for a share of on-going service revenues" before agreeing to market digital cable boxes.²⁶

²⁵ See Motorola Retail Sale Comments at 9-10.

²⁶ Monica Hogan, "MSOs Tread Carefully Into Retail World: Retailers Want Piece of the Profits, Too," *Multichannel News*, May 1, 2000, at 121. See also "Scientific-Atlanta Readies for Retail of Set-Top Boxes," *The Atlanta Constitution*, June 28, 2000, at E-1, 9 (quoting statement of Wachovia Securities Industry Analyst George Hunt that "[t]he first thing Circuit City wanted was a portion of the monthly cable bill"); "Bickering Delays Retail Debut of Set-Top Cable Boxes," *USA Today*, July 25, 2000, at B-1 (quoting statement by Radio Shack senior executive that "we believe that we deserve a piece of that [cable] revenue stream"); "Pricing Quandary Slows Down Retail Set-Top's Development," *Extra/Extra*, Nov. 30, 2000, at 10 (noting that major consumer electronics retailers "want to follow the DBS and cell phone business model, where the product is subsidized and the retailers get a nice slice of the monthly revenue."); cf. Gary Arlen, "Electronics Courtship Doesn't End Competition," *Multichannel News*, Jan. 28, 2002, at 32 ("The growing mantra among electronics makers, and their retail outlets calls for bundling services with the hardware. The Consumer Electronics Association is a major cheerleader for that concept, which gives its constituency an annuity revenue stream. According to this vision, selling the network gateway devices would entitle dealers and vendors to a piece of the monthly subscription action."). See also NCTA Retail Sale Comments at 15, 23-25; NCTA Retail Sale Reply Comments at 22-24; NCTA Response To CERC at 8.

Even after the integration ban's January 1, 2005 effective date, retailers presumably will have no greater interest in selling "just boxes" and will continue to refrain from making any commitment to purchase Host devices for resale to consumers until they are given an economic inducement, in the form of higher profit margins, to do so.²⁷ So, while it is clear that implementing the integration ban will saddle cable customers with the enormous additional costs described above for *each* POD-Host Combination, there is no basis for presuming or predicting that the integration ban will spur the retail sale of Host devices.

IV. IN LIGHT OF CHANGED CIRCUMSTANCES, THE COMMISSION'S RATIONALE FOR THE INTEGRATION BAN NO LONGER EXISTS.

As the discussion above demonstrates, under any reasonable cost-benefit calculus, the inexorable conclusion is that the integration ban should be eliminated. This conclusion is especially justified given that the Commission's rationale for the integration ban is no longer tenable in light of changed circumstances.

The integration ban was adopted based on the assumption that integrated devices would otherwise be available *only* through the cable operator. Indeed, the Commission explicitly justified its decision to impose the ban on the basis that "[a]llowing MVPDs the advantage of being the *only* entity offering bundled boxes [*i.e.*, integrated boxes with embedded security] could adversely affect the development of this equipment market," and that accordingly "the prohibition on integrated boxes allows for equal competition in the marketplace."²⁸

²⁷ In this regard, it is important to note that the Commission has no authority to require retailers to make any commitment whatsoever, now or in the future, to the retail sale of Host devices.

²⁸ *Reconsideration Order* ¶ 30. The language and legislative history of Section 629 of the Communications Act make clear that the commercial availability provisions were intended to
(footnote continued...)

However, the fact that integrated digital set-top boxes do not present the same theft-of-service threat as analog devices has enabled the cable industry to support the retail sale of integrated digital set-top boxes identical to those provided by operators,²⁹ thereby eliminating the rationale for the ban.³⁰ Since the cable industry has now committed to support *integrated* devices purchased at retail which are *identical to those provided by cable operators themselves*, the Commission's own reasoning suggests that the prohibition can no longer be justified. For this reason as well (in addition to the cost arguments discussed above), the Commission should eliminate the integration ban.

NCTA wishes to be clear. It is not advocating the abandonment of POD-Host. In fact, as noted above, leading MSOs have consistently affirmed the cable industry's ongoing commitment

(... footnote continued)

ensure that consumers were not *forced* to purchase or lease navigation devices from the MVPD network operator. See 47 U.S.C. § 549(a); S.Rpt 104-230, 104th Cong., 2nd Sess. (1996) at 181; see also *General Instrument Corp.*, 213 F.3d at 727 (noting that “[c]onverter boxes traditionally have been available to consumers only by lease from cable operators,” and further observing that pursuant to Section 629 “[t]he FCC was directed to take steps to make converter boxes (and other navigation devices) commercially available from sources other than cable operators.”).

²⁹ See n. 23, *supra*.

³⁰ As NCTA has previously noted, the industry's willingness to support the Retail Set-Top Box Initiative reflects the fact that cable operator concerns with respect to the security risks associated with allowing retail distribution of integrated devices have been significantly reduced. See, e.g., NCTA Retail Sale Comments at 39, n.93. The concerns raised by the cable industry in the initial rulemaking with respect to the provision of integrated devices at retail related in large part to the vulnerability of *analog* conditional access technology, which was then the predominant technology in the industry. With the industry's migration to *digital* conditional access technology, these concerns have been alleviated to the point where cable operators are now prepared to support the retail distribution of integrated devices. Indeed, as the discussion above indicates, the embedded security approach utilized in integrated digital set-top boxes is in fact *more secure* than the separated security approach reflected in the POD-Host Combination. See discussion at 2, n.3, *supra*, and sources cited therein.

to develop and evolve OpenCable hardware and OCAP software ("middleware") specifications in order to enhance the functionality and portability of the POD-Host option.³¹ Rather, we suggest that the best public policy here is to ensure that consumers can choose *either* of these two options, depending on which best fits their particular needs and preferences. While many consumers are likely to prefer the particular features in an integrated device, which might be offered by a cable operator *or* a retailer, some may prefer the different features offered in a Host device, which also might be offered by a retailer or a cable operator.³² In short, we wholly endorse the view previously articulated by Chairman Powell, urging that "the market should be allowed to play this out."³³

³¹ See, e.g., NCTA Retail Sale Comments at 2-3, 20-21; NCTA Retail Sale Reply Comments at 2, 15; NCTA Response to CERC at 9-13, 18-19; MSO Commitment Letters, *supra* n.22.

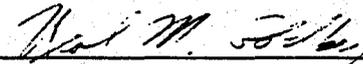
³² Indeed, retailers seeking to market Host devices have product integration opportunities of their own that may create efficiencies, in the form of reduced cost and/or increased functionality for products integrating navigation device functions into other consumer electronics equipment (e.g., TV, DVDs, VCRs), which may make such products appealing to consumers. See NCTA Retail Sale Comments at 32-33; NCTA Retail Sale Reply Comments at 42-43; NCTA Response To CERC at 21-22.

³³ Statement of Commissioner Powell, *Report and Order*, 13 FCC Rcd. at 14848. See also *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronics Equipment*, Memorandum Opinion and Order, 11 FCC Rcd. 4121, ¶ 38 (1996) (holding that it is in the public interest to permit cable operators to continue to provide integrated devices in an environment where non-security devices are available at retail).

CONCLUSION

Based on the foregoing, particularly the new cost data described herein, and in light of the fact that the Commission's prior rationale for the integration ban no longer exists due to changed circumstances, NCTA respectfully urges the Commission to eliminate the integration ban.

Respectfully submitted,


Daniel L. Brenner
Neal M. Goldberg
Loretta P. Polk

William A. Check, Ph.D.
Vice President, Science &
Technology

Andy Scott
Director of Engineering

Counsel for the National Cable &
Telecommunications Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 775-3664

August 2, 2002

Appendix A

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

In the Matter of)	
)	
Implementation of Section 304 of the 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.

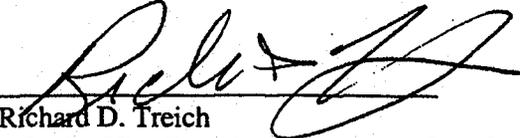
2. The purpose of my declaration is to detail how the additional costs associated with the POD-Host Combination -- using the mid-point of the range for these additional costs identified in the NCTA report to which this declaration is appended, *i.e.*, \$82.50 -- would translate into potential increases 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:

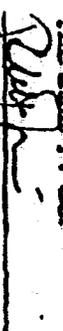
This letter will confirm our complete support of the CableLabs OpenCable project and the development of specifications to ensure interoperability and thus retail availability of set-top boxes and other navigational devices. Our companies commit to supporting the interoperability of our cable systems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

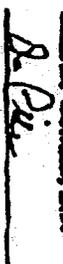

William J. Brennan
President and CEO
Brennan Comm. Co.


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


Robert Watren
President
Advance/Newhouse Comm.
Jina O. Robbins
President and CEO
Cox Cable Comm., Inc.
Services


Scott Chambers
President
Chambers Comm. Corp.


Gary 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. Illig
Chairman and CEO
MediaOne Group


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

James Rigas, Executive Vice President
Adelphia Cable Communications Corp.

William Schleyer, President and CEO
AT&T Broadband

Carl Vogel, President and CEO
Charter Communications, Inc.



Brian Roberts, President
Comcast Corporation

Jim Robbins, President and CEO
Cox Communications, Inc.

Robert Miron, President
Advance/Newhouse Communications

Joseph Collins, Chairman and CEO
AOL Time Warner Interactive Video

Scott Chambers, President
Chambers Communications Corp.

Glenn Britt, Chairman and CEO
Time Warner Cable

January 18, 2002
Richard R. Green

Page Two

Sincerely,

James Rigas, Executive Vice President
Adelphia Cable Communications Corp.

William Schleyer, President and CEO
AT&T Broadband

Carl Vogel, President and CEO
Charter Communications, Inc.

Brian Roberts, President
Comcast Corporation

Jim Robbins, President and CEO
Cox Communications, Inc.


Robert Milon, President
Advance/Newhouse Communications

Joseph Collins, Chairman and CEO
AOL Time Warner Interactive Video

Scott Chambers, President
Chambers Communications Corp.

Glen Britt, Chairman and CEO
Time Warner Cable

January 18, 2002
Richard R. Green

Page Two

Sincerely,

James Riggs, Executive Vice President
Adelphia Cable Communications Corp.

William Schleyer, President and CEO
AT&T Broadband

Carl Vogel, President and CEO
Charter Communications, Inc.

Brian Roberts, President
Comcast Corporation

Jim Robbins, President and CEO
Cox Communications, Inc.

Robert Mirou, President
Advantus/Newhouse Communications

Joseph Gillis, Chairman and CEO
AOL Time Warner Interactive Video

Scott Chambers, President
Chambers Communications Corp.

Glenn Britt, Chairman and CEO
Time Warner Cable

January 18, 2002
Richard R. Green

Page Two

Sincerely,

James Rigas, Executive Vice President
Adelphia Cable Communications Corp.

William Schleyer, President and CEO
AT&T Broadband

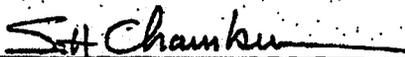
Carl Vogel, President and CEO
Charter Communications, Inc.

Brian Roberts, President
Comcast Corporation

Jim Robbins, President and CEO
Cox Communications, Inc.

Robert Miron, President
Advance/Newhouse Communications

Joseph Collins, Chairman and CEO
AOL Time Warner Interactive Video


Scott Chambers, President
Chambers Communications Corp.

Glenn Britt, Chairman and CEO
Time Warner Cable

January 18, 2002
Richard R. Green

Page Two

Sincerely,

James Rigg, Executive Vice President
Adelphia Cable Communications Corp.

William Schleyer, President and CEO
AT&T Broadband


Carl Vogel, President and CEO
Charter Communications, Inc.

Brian Roberts, President
Comcast Corporation

Jim Robbins, President and CEO
Cox Communications, Inc.

Robert Milton, President
Advance/Newhouse Communications

Joseph Collins, Chairman and CEO
ADL Time Warner Interactive Video

Scott Chambers, President
Charters Communications Corp.

Glenn Britz, Chairman and CEO
Time Warner Cable

January 18, 2002
Richard R. Green

Page Two

Sincerely,

James Rigas, Executive Vice President
Adelphia Cable Communications Corp.



William Schleyer, President and CEO
AT&T Broadband

Carl Vogel, President and CEO
Charter Communications, Inc.

Brian Roberts, President
Comcast Corporation

Jim Robbins, President and CEO
Cox Communications, Inc.

Robert Miron, President
Advance/Newhouse Communications

Joseph Collins, Chairman and CEO
AOL Time Warner Interactive Video

Scott Chambers, President
Chambers Communications Corp.

Glenn Britt, Chairman and CEO
Time Warner Cable

January 18, 2002
Richard R. Green

Page Two

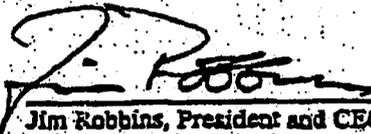
Sincerely,

James Rigas, Executive Vice President
Adelphia Cable Communications Corp.

William Schleyer, President and CEO
AT&T Broadband

Carl Vogel, President and CEO
Charter Communications, Inc.

Brian Roberts, President
Comcast Corporation



Jim Robbins, President and CEO
Cox Communications, Inc.

Robert Miron, President
Advance/Newhouse Communications

Joseph Collins, Chairman and CEO
AOL Time Warner Interactive Video

Scott Chambers, President
Chambers Communications Corp.

Glenn Britt, Chairman and CEO
Time Warner Cable

January 18, 2002
Richard R. Green

Page Two

Sincerely,

James Rigan, Executive Vice President
Adelphi Cable Communications Corp.

William Seibler, President and CEO
AT&T Broadband

Carl Vogel, President and CEO
Charter Communications, Inc.

Brian Roberts, President
Comcast Corporation

Jim Robbins, President and CEO
Cox Communications, Inc.

Robert Myron, President
Advance/Newhouse Communications

Joseph Collins, Chairman and CEO
AOL Time Warner Interactive Video

Scott Chambers, President
Chambers Communications Corp.

 
Glenn Britt, Chairman and CEO
Time Warner Cable

Appendix C



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 12th 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.¹ 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.²

¹ 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.

² 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.").

No. of Copies rec'd 1
List ABCDE

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

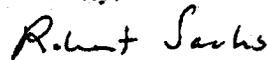
needed to make PODs work in host devices.³ Under this plan, no PHILA signature is required because there is no POD interface in the integrated boxes at issue.⁴

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.⁵ 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

³ 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).

⁴ 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.

⁵ 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 Broecker, 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