

**Before the  
Federal Communications Commission**

In the Matter of	)	
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of Navigation Devices	)	
	)	
Compatibility Between Cable Systems And Consumer Electronic Equipment	)	PP Docket No. 0067
	)	

**REPLY COMMENTS OF  
CONSUMER FEDERATION OF AMERICA**

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**April 28, 2003**

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## INTEREST AND EXPERTISE OF COMMENTER

The Consumer Federation of America is the nation's largest consumer advocacy organization. CFA is a non-profit association of 300 state and local affiliates representing consumer, senior citizen, low-income, labor, farm public power and cooperative organizations. CFA represents consumer interests before Congress and federal agencies and assists its state and local members in their local jurisdiction.

CFA has participated in public policy on the transition to digital television before the Federal Communications Commission (FCC) and the Congress. We filed comments<sup>1</sup> and reply comments<sup>2</sup> in the Public Interest Obligations proceeding, as well as the digital tuner,<sup>3</sup> broadcast flag proceeding,<sup>4</sup> and second periodic review proceedings.<sup>5</sup> We have also testified before Congress on the transition.<sup>6</sup>

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<sup>1</sup>“Notice of Inquiry Comments of the Consumer Federation of America,” *In the Matter of Public Interest Obligations of TV Broadcast Licensees*, March 27, 2000.

<sup>2</sup>“Notice of Inquiry Reply Comments of the Consumer Federation of America,” *In the Matter of Public Interest Obligations of TV Broadcast Licensees*, April 25, 2000.

<sup>3</sup> *A Consumer Friendly Industrial Policy for the Transition to Digital TV*,

<sup>4</sup>“Comments Of The Consumer Federation Of America, et al.,” *In the Matter of Digital Broadcast Copy Protection*, Federal Communications Commission, MB Docket No. 02-230 December 6, 2002; “Reply Comments, February 18, 2003.

<sup>5</sup>“Comments of the Consumer Federation Of America,” *In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television Public Interest Obligations of TV Broadcast Licensees Children's Television Obligations Digital Television Broadcasters Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, 00-167,00-168, April 21, 2003.

<sup>6</sup>“Statement of Dr. Mark Cooper, Director of Research, Consumer Federation of America, Regarding Digital Television on Behalf of Consumer Federation of America and Consumer's Union” before the *Senate Commerce Committee*, March 1, 2001.

## **MISMANAGING PUBLIC ASSETS**

As with most other aspects of the transition to digital TV, the much bally-hoed “plug and play” deal between the cable operators and the consumer electronic equipment manufacturers represents more hype than progress. The two parties at the table could not agree on several critical aspects of an overall plug and play regime. The parties not at the table – consumers, computer manufacturers, software developers, even broadcasters – have challenged virtually every aspect on which the cable operators and the consumer electronic equipment manufacturers did agree. Worse still, the entire negotiations and the proposal before the commission is haunted by the specter of Hollywood – forever threatening to withhold high quality content unless it is locked down by hardware fixes to deter fictitious threats to their copyrighted content.

Because the Commission has failed to exercise its authority and demonstrate leadership in its stewardship of the digital spectrum, we confront another morass of conflicting industry interests and consumer harm. The Commission’s reliance on voluntary negotiations that exclude many of the most important stakeholders has failed to produce a proposal that is in the public interest.

In short the “plug and play” proposal is a perfect example of the one-step forward, two-steps backward dance that has plagued the transition to digital TV. A half-hearted attempt to ensure compatibility, it will significantly hamper the development of digital television by diminishing consumer value and slowing innovation. A “plug and play” standard should have entailed a simple resolution of hardware interface to pass a digital signal. The technical conditions necessary to plug a consumer device into a network

connection should have been as simple as plugging a toaster into a wall socket, a telephone into a jack, or an analog TV set into a cable wire.

Instead, this rule has been encumbered with content controls and embroiled in debates over policies that would severely diminish the value of consumer electronic equipment. Because the Commission has relied on voluntary negotiations instead of providing procompetitive, consumer-friendly leadership, we are confronted with the full range of diseases that have undermined the transition to digital TV –

- degraded pictures,
- debilitated interactive services,
- stranded legacy equipment,
- innovation retarding gatekeepers, and
- anticompetitive technology reviews by private interests under the guise of copyright protection.

The Commission should write a rule that orders the cable industry to adopt a simple standard for a universal hardware interface to pass digital signals in both directions. The consumer electronics industry should be required to manufacture equipment to that standard, but we suspect that the mandate will hardly be necessary, since an open hardware interface will maximize the value and functionality of the equipment they manufacture.

The intransigence of the content owners and broadcasters should be dealt with in other proceedings. As we have recommended in our comments in the *Second Periodic Review*, there is one and only one way to deal with these interests. If the broadcasters do not fully exploit the gift of digital spectrum they were given almost a decade ago, they should lose the right to use it.

## CONTENT CONTROLS PARADING AS HARDWARE INTERFACES

The “plug and play” proposal is a radical departure from previous approaches to ensuring interoperability of consumer electronic equipment and network services. Previous approaches to “plug and play” have been based on simple open technology requirements for passing signals. They have been content neutral. Open standards that facilitate interoperability and promote the flow of content and applications serve the consumer interest and promote the most rapid development of services that drives technology adoption.

The “plug and play” proposal before the Commission is encumbered with a complex scheme of coding intended to protect content. Worse still, the encoding scheme is tied to a specific technology controlled by a small cabal of technology companies (the 5C technologies and the DFAST license). Content controls will retard adoption of the technology and their implementation will undermine competition.

The implementation of the content controls under the “plug and play” proposal could strand thousands of legacy devices.<sup>7</sup> As written, it may eliminate the availability of a basic tier of an unencrypted basic tier of service.<sup>8</sup>

Corporate control of the technology will inhibit innovation and slow development of new services and consumer-friendly copyright protection approaches. This will be a particularly severe problem if the Commission allows the broadcasters to control the approval of technologies, as they demand.

If the Commission accepts the “plug and play” regime as proposed, it will quickly become enmeshed in complex and continuous regulation. It must constantly interject itself

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<sup>7</sup> “Comments of Public Knowledge and Consumers Union,” p. 4.

<sup>8</sup> “Comments of the Electronic Frontier Foundation,” p. 3.

into copyright law as business models evolve. It must referee robustness rules as new technologies enter the market.

### **UNDERMINING THE FUNCTIONALITY OF TELEVISIONS**

One of the most ironic aspects of the “plug and play” proposal is the debate over down resolution (down-rezzing). Down-rezzing is a process Hollywood favors because it diminishes the quality of the signal received, which makes it less desirable to copy and distribute. The Motion Picture Association of America aptly refers to down-rezzing as “image constraint.” The term is apt because as down-rezzing diminishing the quality of the signal it also degrades the quality of the picture.

Needless to say, neither consumers nor equipment manufacturers are fond of a policy that means their equipment will not perform up to par. Consumers will be disappointed by the performance of their equipment. Manufacturers will find it hard to sell equipment that cannot fulfill its potential.

The cable operators and the equipment manufacturers agreed on a partial ban on down-rezzing, but the content providers are in an uproar, claiming that the partial ban infringes their rights to sell inferior products and exceeds the Commission’s authority.<sup>9</sup> The largest cable operator has already capitulated to the studios, indicated it will support down-rezzing.<sup>10</sup>

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<sup>9</sup> “Comments of the Motion Picture Association of America, Inc.” p. 12

<sup>10</sup> “Comments of Comcast Corporation,” pp. 6-7, states that “if the commission determines, as a number of content providers have suggested, that permitting down-resolution of high-value digital content delivered over analog connectors is the only means of ensuring that such content will be made available to MVPDs and thus to consumers, Comcast would support adoption of rules achieving that result.”

Image constraint is an illogical approach to copy protection for high quality programming on two grounds. First, it destroys the very thing it is intended to protect, high quality. Second, down-rezzing makes the widespread distribution of copied content easier. As we have pointed out in our comments on the broadcast flag, the file size of high quality video is a major barrier to transmission over the Internet. By shrinking the file size, down-rezzing makes it easier to transmit the inferior files.

#### **INHIBITING THE DEVELOPMENT OF COMPUTER-BASED INTERACTIVE SERVICES**

Computer manufacturers and consumers share a concern about the tenuous position in which interactive services have been placed by the proposed rule.<sup>11</sup> The plugs will not play interactive services. The rule precludes computer devices from connecting to the network through cable modems. A deal on passing two-way signals is left to another day.

This is a blatant attempt by purveyors of one-way services – push video – to retard the development of interactive, two-way services that can make best use of the capabilities of the digital communications networks. This furthers the cable operators’ scheme of controlling advanced telecommunications and new video services that could flow through the Internet and reach consumers through cable modems. Cable operators have steadfastly exerted controls over network functionality to prevent the development of services that might compete directly and indirectly with their video products. The hardware interface is just another network choke point for the cable operators to strangle competition.

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<sup>11</sup> “Comments of ATI Technologies, Inc., Dell Computer Corporation, Hewlett-Packard Company, Intel Corporation, Microsoft Corporation, and NEC Corporation,” p. 4.

## **A CHRISTMAS TREE FOR THE BROADCASTERS AND HOLLYWOOD**

The broadcasters and Hollywood would like to distort the simple hardware interface with a number of their other pet policies. Broadcasters urge the Commission to use this proceeding to mandate the passage of program information<sup>12</sup> and the capacity to receive over the air signals.<sup>13</sup> The broadcasters will leave no stone unturned in their campaign to save the rabbit ears.

Hollywood has trotted out its full list of demand for content controls.<sup>14</sup> Above all it has used this proceeding to surface its ongoing efforts to close the analog hole, which has been the center of its not-so hidden agenda since the broadcast flag was offered up to the commission.<sup>15</sup>

## **CONSUMER INFORMATION AND LABELING**

The Commission and commentors devote a great deal of attention to the question of labeling. All of this noise occurs because the proposed rule is far too complex and journeys into content protection, when it should not. If the Commission focuses on a simple standard for hardware interface, these issues will not be a problem. Consumers will truly be able just “plug and play” their TV sets.

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<sup>12</sup> “Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc.,” p. ii. (hereafter, NAB).

<sup>13</sup> “Comments of Sinclair Broadcasting Group,” p. 3; NAB, p. i.

<sup>14</sup> MPAA, pp. 14-15.

<sup>15</sup> MPAA, p. 2.