

**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)	PP Docket No. 67
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	

REPLY COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. (“DIRECTV”)¹ hereby offers the following reply comments in the above-captioned proceeding.

The Commission presently is considering whether to preserve or eliminate its rule prohibiting cable operators from deploying set-top boxes with integrated security as of July 1, 2006.² Only two parties have filed recent comments³ on this issue. The National Cable & Telecommunications Association (“NCTA”) predictably argues that the rationales underlying the integration ban are no longer valid, and that its alleged costs are unnecessary and unwarranted, such that it should be eliminated. The Consumer Electronics Industry (through the jointly-filed

¹ DIRECTV is a wholly-owned subsidiary of DIRECTV Enterprises, LLC, a licensee in the DBS service and wholly-owned subsidiary of Hughes Electronics Corporation.

² In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, *Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 7924 (2003). In seeking comment, the Commission ordered a one-year extension of the integration ban deadline, from January 1, 2005 until July 1, 2006. *Id.* at ¶ 4.

³ The Commission already had sought comment on the issue in 2000. *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 and Declaratory Ruling*, 15 FCC Rcd 18199 (2000).

comments of the Consumer Electronics Association and the Consumer Electronics Retailers Coalition), on the other hand, argues that the integration ban and associated 2006 deadline should stay in place.

DIRECTV is the United States' largest provider of Direct Broadcast Satellite ("DBS") service, with more than 12.2 million subscribers nationwide, the nation's second largest multichannel video programming distributor ("MVPD"), and a leading provider of digital subscription television programming. DIRECTV and other DBS providers historically have not been subject to the integration ban because the Commission correctly determined in 1998 that, unlike cable set-top boxes, DBS set-top boxes already are commercially available and portable throughout the continental United States ("CONUS"), and that the DBS equipment market is already subject to the type of competition that Congress and the Commission have sought to promote.⁴ Thus, the Commission excepted from its rules requiring the separation of conditional access functions those multichannel video programming distributors ("MVPDs"), such as DBS providers, whose navigation devices operate throughout CONUS and are available from unaffiliated retail outlets and vendors throughout the United States.⁵

DIRECTV strongly objects to NCTA's position that a retention of the integration ban would allow DBS providers to "unfairly compete" with cable operators, and places the "thumb on the scale in favor of one competitor over another."⁶ This argument ignores the fundamental reality that the "scale" of MVPD competition still weighs heavily in the direction of cable operators, and that these cable incumbents continue to exert substantial MVPD market power.

⁴ See 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 (1998) ("Navigation Devices Order"), at ¶¶ 63-66.

⁵ *Id.* at ¶ 66; see 47 C.F.R. § 76.1204(a)(2).

⁶ Comments of NCTA at 17.

There is little question that DBS providers have made important competitive inroads into cable's dominance and have grown to be formidable individual MVPD competitors. But this hardly means that there is "a highly competitive video programming marketplace," as NCTA asserts.⁷ In its recent approval of the investment by News Corporation in DIRECTV's parent company, Hughes Electronics Corporation, the Commission observed:

[W]hile the two primary incumbent DBS competitors have attracted enough subscribers nationwide to rank them among the largest MVPDs, they rank far behind cable operators in most local markets, including all the most populous urban areas. Cable remains the predominant provider of MVPD services in these markets.⁸

The Commission's most recent competitive assessment of the MVPD marketplace echoes the point, stating that cable operators continue to dominate the MVPD market with a 75% share.⁹ In view of these recent Commission findings, whatever rationales may exist for removing the integration ban, "leveling the playing field" (a theme continuously sounded in NCTA's filing)¹⁰ plainly is not one of them.

Furthermore, NCTA's citation of DIRECTV's efforts to streamline and standardize its hardware strategy "from manufacture to retail sale"¹¹ as a reason for the Commission to

⁷ *Id.*

⁸ *News/Hughes Order* at ¶ 361 (footnotes omitted).

⁹ *See In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Tenth Annual Report*, MB Docket No. 03-172 (rel. Jan. 28, 2004), at ¶¶ 124, 4.

¹⁰ *See Comments of NCTA* at 2, 7, 14, 20. In fact, the Commission has already rejected such arguments in this proceeding, finding that neither the Communications Act nor good public policy "requires uniform regulations across all multichannel video service platforms," and especially when "the MVPD market for all services is not fully competitive." 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 (1999), at ¶ 37 (citation omitted).

¹¹ *Comments of NCTA* at 19.

eliminate the integration ban similarly misses the mark. Indeed, NCTA’s observations are consistent with the Commission’s findings that the DBS equipment marketplace features “devices available at retail and offers customers a choice, as compared to equipment for other MVPD services, particularly cable operators,” which provides “justification for not applying the rule requiring separation of security functions to DBS service.”¹² As in 1998, DBS equipment remains (i) widely available at retail outlets, (ii) from at least three different DBS service providers, (iii) from a number of different equipment manufacturers, (iv) on a geographically portable basis.¹³ Cable’s navigation devices, by contrast, still do not have these characteristics – which, of course, is the very purpose of the navigation devices rules and their statutory underpinning, Section 629 of the Communications Act.¹⁴

As the Commission considers whether to retain the integration ban for cable operators, DIRECTV wishes to ensure that the Commission does not lose sight of the facts, and its earlier and current findings, in making its determination on the issue.

¹² *Navigation Devices Order* at ¶ 64.

¹³ *See id.* at ¶¶ 64-66.

¹⁴ In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, *Further Notice of Proposed Rulemaking and Declaratory Ruling*, 15 FCC Rcd 18199 (2000), at ¶ 1 (Commission’s navigation devices rules “were adopted to implement Section 629 . . . and are designed to assure the commercial availability from retail outlets of equipment used to access service from multichannel video programming systems”).

Respectfully submitted,

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