

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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 Electronics Equipment)	PP Docket No. 00-67
)	

**REPLY COMMENTS OF VERIZON¹ IN RESPONSE TO
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING²**

As the overwhelming weight of the comments in this proceeding demonstrate, the Commission should *not* allow CableLabs to be the “sole initial arbiter” of approved technologies for protecting against the unauthorized copying of content transmitted over Multichannel Video Programming Distributors (“MVPDs”). Notice, ¶ 83. Verizon is rolling out fiber to the premises (“FTTP”) technology, which will have the capability to provide a variety of video services that compete with traditional cable providers, and there are other technologies, such as digital broadcast satellite, that already do provide such competition. It is unrealistic to expect CableLabs, a trade association designed to further the interests of the traditional cable industry, would be able to act as a neutral arbiter in deciding whether or not

¹ The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications, Inc., and are listed in Attachment A. For purposes of this filing, Verizon also includes Verizon Internet Services Inc., which provides Internet access to more than one million subscribers.

² *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; and Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking (rel. Oct. 9, 2003) (“Order” or “Notice”).

to allow competing products and services to come to the marketplace, or to set standards that would apply across different industries.

In order to maximize the incentives for the development of competing technologies, the Commission should establish objective criteria for evaluating which technologies are approved for protection against unauthorized copying. By contrast, a regime that relied on CableLabs to be the sole arbiter of approved technologies would allow the cable industry to slow the rollout of technologies that compete with traditional cable offerings. Once such objective criteria are established, parties should be able to self-certify new technologies against those criteria. Finally, the Commission must avoid revoking approvals for any such technologies once approved.³

I THE COMMISSION SHOULD SET OBJECTIVE, FUNCTIONAL CRITERIA FOR DEVELOPING NEW TECHNOLOGIES, AND ALLOW MANUFACTURERS TO SELF-CERTIFY COMPLIANCE WITH THE CRITERIA

The Notice seeks comment on what standards and procedures should be established for approving new connectors or technologies used for protecting against the unauthorized copying of content used with one-way digital cable televisions and products. Notice, ¶ 83. The plug and play regime ultimately adopted by the Commission should minimize regulatory burdens and costs on manufacturers and consumers. The Commission can best facilitate the speedy, widespread rollout of competing technologies by ensuring that any approval process by which manufacturers introduce new technologies is kept simple and flexible. To that end,

³ The Commission should take a similar approach to the broadcast flag, setting objective criteria, allowing self-certification of approved technologies, and not revoking approval of technologies that have been approved. See Comments of Verizon in Response to Further Notice of Proposed Rulemaking, MB Docket No. 02-230, at 8-10 (filed Feb. 13, 2004).

as others have noted in this proceeding, *objective*, functional criteria for approval of technologies should be established.⁴

Objective standards will give certainty to manufacturers and consumers, which will facilitate investment and innovation. Those developing, manufacturing, and deploying new technologies must know the standards to which those technologies will be held if they are to bring new products and services to market quickly and inexpensively. Otherwise, the regime will provide manufacturers with little incentive to innovate, lead to higher development costs (which would ultimately be passed on to consumers), and increase the time it takes to bring new products and services to market, all to the detriment of the public.

As several commenters noted in initial comments, once objective criteria are established for evaluating new technologies for protecting content against unauthorized copying and distribution, parties should be able to self-certify that their technologies comply with the criteria.⁵ Self-certification serves the public interest by allowing manufacturers to develop and deploy products quickly and efficiently to meet consumer demand.

II. THE COMMISSION SHOULD NOT DESIGNATE CABLELABS AS THE SOLE INITIAL ARBITER OF CONTENT PROTECTION TECHNOLOGIES

Failing self-certification, the majority of commenters in this proceeding agree, the Commission should *not* designate CableLabs – an entity that lacks independence from the traditional cable television industry by and for whom it was created – as the sole party

⁴ See, e.g., Comments of the American Antitrust Institute, at 4-5 (filed Feb. 13, 2004); Comments of Intel, at 2-5 (filed Feb. 13, 2004); Comments of Microsoft *et al.*, at 6-9 (filed Feb. 13, 2004); Comments of Philips Electronics North America Corporation, at 5 (filed Feb. 13, 2004); Comments of Public Knowledge and Consumers Union, at 9 (filed Feb. 13, 2004).

⁵ See, e.g., Comments of ATI Technologies, Inc., at 4 (filed Feb. 13, 2004); Intel Comments at 6-7; Microsoft Comments at 6, 10-12.

responsible for evaluating and approving technologies to protect against the unauthorized copying and distribution of protected content.⁶ Given CableLabs' dedication to, and singular focus on, serving the needs of the cable industry, it cannot be relied upon to remain neutral and impartial when asked to make determinations on technologies that affect competitors to traditional cable providers. Indeed, as described below, in another context, CableLabs has been pushing independent equipment manufacturers to adopt standards that would focus on the needs of the traditional cable industry, but that would not work for competing technologies. If it were allowed to be the gatekeeper for the approval and deployment of new plug and play technologies, CableLabs' singular focus on the traditional cable providers' needs would allow it to prevent alternative technologies from being approved, thereby threatening competitors' abilities to provider innovative new products and services.

Although not a part of the rules at issue in this proceeding, the problems associated with CableLabs' standard-setting role already have presented themselves in the context of the development of standards that will apply to technologies that use two-way transmission. For example, CableLabs has been instrumental in creating and implementing DOCSIS 2.0, a set of industry standards now being used by cable companies as a blueprint for developing additional coaxial cable facilities. CableLabs has been urging the Consumer Electronics Association to adopt the same standard for consumer electronics manufacturers. However, the DOCSIS 2.0 specifications do not address the needs of competing technologies, such as FTTP and digital broadcast satellite. Specifically, DOCSIS 2.0 specifies an upstream path that is not consistent with the IP over Ethernet (IEEE 802.3i) alternative for upstream

⁶ See, e.g., American Antitrust Institute Comments at 5-6; Microsoft Comments at 10-12; Pubic Knowledge and Consumers Union Comments at 8-9; Comments of BellSouth Entertainment, LLC, at 3-4 (filed Feb. 13, 2004); Comments of DirecTV, Inc., at 10-12 (filed Feb. 13, 2004); Comments of EchoStar Satellite, L.L.C., at 4-5 (filed Feb. 13, 2004).

transmission. Thus, accepting CableLabs' urging would create standards for the development of manufacturing equipment that would work for traditional cable providers, but not their competitors. By contrast, the International Electrical and Electronic Engineers (IEEE), an independent, accredited and open standards setting organization, has developed the IEEE 802.3i standard that takes into account the needs of competing technologies. Verizon's planned video FTTP deployment would be able to interface with equipment manufactured to meet the IEEE 802.3i standard with an RJ-45 interface for upstream transmission, but would not be able to use DOCSIS 2.0-designed technology.⁷ Accepting the standards advocated by CableLabs thus would lead to the development of equipment, such as connectors, set-top boxes, and interfaces built into the television sets, that would require additional costs to connect to FTTP or digital broadcast satellite infrastructures. Although not an issue in this proceeding, when the Commission considers the standards to be adopted for two-way digital television receivers, it should not adopt DOCSIS 2.0 or any other standard that would be centered on technology only used by traditional cable providers.⁸

Even the few commenters who believe that CableLabs *should* play a role in the technology approval process nonetheless point out the problematic nature of such a role, suggesting that the Commission must take additional actions to ensure that the approval process functions appropriately.⁹ The better view is that delegation to CableLabs is simply

⁷ The RJ-45 Ethernet connection is an interface that ADSL modems, cable modems conforming to DOCSIS 1.0 and 2.0, FTTP optical network termination.

⁸ The Commission is first working on establishing the plug and play frame work for one-way digital television receivers, and will only turn to developing a two-way standard in the second phase of this proceeding. *See* Statement of Commissioner Abernathy. When the Commission develops that two-way standard, it should adopt the IEEE 802.3i framework, or another one that will work with all competing technologies, rather than DOCSIS 2.0.

⁹ *See, e.g.*, Intel Comments at 6-7 ("Commission should authorize independent third parties (in addition to CableLabs) to certify compliance" with the objective criteria); Philips Comments at 2-3, 6 (Commission's appellate role in overseeing initial determinations made

inappropriate, and that, failing self-certification, the Commission should either handle approval decisions itself or designate an independent third party to do so.¹⁰

III. THE COMMISSION SHOULD NOT REVOKE APPROVAL FOR PREVIOUSLY APPROVED TECHNOLOGIES

Several commenters also noted that the Commission should strive to avoid revoking the approval of technologies once they have been approved.¹⁰ Revocation of approval for technologies should face a very high hurdle, if ever allowed, and should be implemented on a going-forward basis only. Technology approval revocation should never require the recall of existing equipment already in the marketplace or the disabling of products in consumers' homes. To do otherwise would risk orphaning devices and technologies already in the marketplace and/or leaving consumers stranded with useless and obsolete equipment, ultimately decreasing consumer confidence. Such a decrease in consumer confidence would only dampen consumer demand for technologies that remain approved, resulting in decreased incentives for investment in new technologies. Moreover, the threat of revocation provides a serious disincentive for technology companies to innovate. Accordingly, revoking approval of an approved technology must not be taken lightly as it could have devastating

by CableLabs is crucial); Comments of Time Warner, Inc., at 5, 13 (filed Feb. 13, 2004) (“FCC oversight of approval . . . relating to content protection technologies (i.e. through an appeals process which studios and other content owners/distributors would initiate) would provide all interested parties with a fair and neutral dispute resolution mechanism, and lend a useful measure of uniformity to the process”).

¹⁰ See, e.g., American Antitrust Institute Comments at 5-6; Microsoft Comments at 10-12; Public Knowledge and Consumers Union Comments at 8-9; BellSouth Comments at 3-4; DirecTV Comments at 10-12; EchoStar Comments at 4-5.

¹⁰ See, e.g., ATI Technologies Comments at 2-4; Comments of Consumer Electronics Association, at 8-9 (filed Feb. 13, 2004); Comments of Consumer Electronics Retailers Coalition, at 3-4 (filed Feb. 13, 2004); Comments of Home Recording Rights Coalition, at 7-8 (filed Feb. 13, 2004); Intel Comments at 7; Comments of Matsushita Electric Corporation of America, at 5 (filed Feb. 13, 2004); Microsoft Comments at 13-14; Public Knowledge and Consumers Union Comments at 9-10.

consequences, consequences that will be magnified the longer a technology is deployed. Verizon therefore agrees with the revocation procedures advanced by Microsoft *et al.*, which appropriately limit revocation to situations where the approved technology has been so significantly compromised that the risk of substantial harm to the market for digital content outweighs the likely effect on consumers and all other potential remedies have been found to be infeasible, as determined only by the Commission or an authorized independent entity.¹¹

Respectfully submitted,



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¹¹ See Microsoft Comments at 13-14.

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.