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The Honorable Deborah T. Tate
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: NCTA Request for a Limited-Time Waiver of the Integration Ban

Dear Commissioner Tate:

Today NCTA has submitted a request for a waiver for a limited time of the Commission rule (the "integration ban") that requires cable operators, as of July 1, 2007, to deploy more costly, less efficient set-top boxes to their customers with no additional benefit to those customers. I will not repeat all the points made in our waiver request; but I write separately to emphasize that the Commission rarely has had such a clear-cut opportunity to help consumers, to advance the digital transition, and to ensure fair and robust competition.

I recognize that it would be easier for the Commission simply to rest on the fact that a decision was made almost a decade ago. But in 2006, the integration ban is a complete anachronism.

In 1996, Congress directed the FCC to adopt rules to assure the commercial availability of set-top boxes and other "navigation devices." One problem in reaching that goal was that different cable systems used different security technologies to protect their signals. This made it difficult, if not impossible, to sell "cable ready" devices at retail that would descramble signals in different cable systems across the country and permit cable customers to use those devices with their new cable systems when they moved. In 1998, the Commission addressed that problem by requiring that cable operators separate the security functionality from the other features of their set-top boxes so that "cable ready" devices that would work on any cable system could be sold at retail – the operator would provide the customer with a "separate security" card compatible with that operator's security system, which would plug into a slot on the retail "host" device to access that operator's scrambled programming.

The cable industry supported that proposal and implemented it through CableLabs by developing the CableCARD. But, having sanctioned a costly hardware "fix" (i.e., the CableCARD) as the way to accomplish the goal of commercial availability, the Commission then went a step further and forced cable operators not only to support CableCARDs in the retail market, but also to put CableCARDs in their own set-top boxes that they lease to customers. Why? Not because Congress required it, because it did not; but apparently on the theory that the cable industry will support CableCARDs more completely in retail devices if we have to support them in our own set-top boxes.

A competitive retail market for these devices is certainly a laudable goal. So, what is the state of the market for "cable ready" and other retail devices today? It is robust and developing – without the integration ban ever having taken effect. There are over 450 models of digital cable ready devices from 24 manufacturers available at retail today, and many more (including two-way devices) are on the way. Cable operators have deployed over 170,000 CableCARDs for use in digital cable ready devices. In addressing this issue in March 2005, the Commission itself observed that "innovation continues to be a hallmark of the navigation devices and digital cable ready equipment markets."

And if a competitive market were truly the problem, does the ban apply to all video providers equally? No. In 1998, the FCC saw fit to exempt the Direct Broadcast Satellite industry, our principal competitor, on the assumption that its set-top boxes were "commercially available" from a number of unaffiliated manufacturers. Ironically, DirecTV and EchoStar, now with almost a 30% share of the MVPD market, are moving in the opposite direction: that is, unlike cable operators who are supporting a robust market for "digital cable ready" devices, DBS is deploying proprietary set-top boxes that have no competition from third-party offerings in the retail market. Indeed, a very strong argument can be made that cable operators today satisfy the exemption from the ban claimed by DBS.

Is there any evidence that if cable operators are forced to impose a higher cost solution on our customers, cable operators will be more invested in supporting CableCARDs? No. In fact, the record is replete with how much work we and the consumer electronics industry have done to ensure that CableCARDs work. And, apart from Commission rules requiring cable operators to support CableCARDs, operators have an economic incentive to make sure that consumers who have purchased digital cable ready devices receive all of the cable services that those devices are capable of receiving. Those customers are our customers too, and if their DTV sets cannot access our video services because of a fault with the CableCARD, we may well lose that customer to a competitor. The market – reinforced by existing Commission regulations – will ensure that operators will make CableCARDs work as intended.

Finally, and most important, is the consumer demanding a higher cost box that requires an additional step (i.e., securing and attaching a CableCARD) to get video service? Of course not. The idea is laughable.

Yet, here we are, simply continuing down a path set almost a decade ago and continuing to fruitlessly attempt to micromanage a marketplace that has long since left regulators behind.

Just last year, the FCC noted that there was a more elegant and consumer-friendly solution reflective of the present and future: "downloading" a security access system to the device, whether an operator's leased set-top box or a digital cable ready device purchased at retail. Our waiver request details our commitment to downloadable security and just how much work and investment has gone into a software-based solution that is obviously superior to a hardware solution that belongs in the past.

Moreover, at a time when Congress and the Commission have made the digital transition a national priority, it would surely be one of the strangest policy outcomes that, when the government is preparing to subsidize over-the-air households to the tune of $40 for each digital-to-analog converter, it should simultaneously force consumers to pay $72 to $93 more for leased digital boxes that could help facilitate the digital transition *without* any government subsidy.

Thus, what we are asking for is fairly straightforward. Since there is not a "problem" that requires a solution like the integration ban, take the time to let us (and our competitors like Verizon, which has made many of the same points) develop a downloadable security solution instead of wasting time and energy on a technology that will be obsolete in just a few years; and take the time to allow our industry to significantly aid the digital transition by continuing to deploy integrated (and therefore less expensive) digital boxes to our customers. It might well be the single most pro-consumer decision this Commission makes in the next few years.

Thank you for your consideration of this request. Should you have any questions about this filing, a copy of which is attached, my staff and I are available to discuss them with you.

Sincerely,

/s/ Kyle McSlarrow

Kyle McSlarrow

Attachment

cc: Marlene H. Dortch (for inclusion in CS Docket 97-80)
Chris Robbins, Legal Advisor to Commissioner Tate
Donna Gregg, Chief, Media Bureau