

**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)	
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	PP Docket No. 00-67
)	

**CONSUMER ELECTRONICS ASSOCIATION
COMMENTS ON
THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**

August 24, 2007

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As the Commission notes at the outset of this Third Further Notice of Proposed Rulemaking (“FNPRM”),¹ the open-market CableCARD reliant devices available today, unlike their CableCARD-reliant counterparts now available for rent from cable operators, remain “unable to access the two-way features available on cable systems, including electronic programming guides (“EPGs”), video-on-demand (“VOD”), pay-per-view (“PPV”), and other interactive television (“ITV”) capabilities.” That this is the case *eleven years after* the Congress instructed the Commission to “assure” the commercial availability of competitive devices,² and less than *eighteen months prior* to the DTV transition date of February 17, 2009, cries out for definitive and expeditious action. The Commission has taken a decisive step toward such action in issuing this Third FNPRM in a docket it opened ten years ago, in 1997.

¹ *Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Third Further Notice of Proposed Rulemaking (rel. June 29, 2007) (“FNPRM”).

² 47 U.S.C. § 549(a).

On behalf of its more than 2,100 member companies, the Consumer Electronics Association (“CEA”) is pleased to provide the Commission with a tangible and substantially complete basis for concluding this FNPRM swiftly and decisively, with a Report & Order that will give consumers additional choices of products and services, hence expedite and help complete the DTV Transition.³ As the Commission describes, CEA and its members, and counterparts in the cable industry, have been unable to deliver to the Commission a complete and mutually agreed two-way framework as they did in 2002 for “one-way” devices.⁴ Each, however, has provided the Commission with purportedly complete sets of drafts and references for establishing such a “two way” framework. In these Comments, CEA draws on these parts, provides the rest of the tools necessary, and urges the Commission to finish the job as expeditiously as is possible.

I. CEA AGREES THAT THE COMMISSION NEEDS TO ACT NOW, AS THE DTV TRANSITION DATE APPROACHES, TO ADOPT REGULATIONS THAT SUPPORT COMPETITIVE CABLE NAVIGATION DEVICES WITH “TWO-WAY” FEATURES.

CEA agrees with the Commission that changed circumstances compel timely action *now*: Since the Commission’s March 17, 2005 deferral order,⁵ the progress toward a two-way solution

³ CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA’s more than 2,100 member companies include the world’s leading manufacturers. CEA’s members design, manufacture, distribute and sell a wide range of consumer products, including television receivers and monitors, computers, computer television tuner cards, digital video recorders, game devices, navigation devices, music players, telephones, radios, and products that combine various of these features and mate them with services – all as chosen by consumers in an open marketplace.

⁴ *Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 20885, 20894, ¶ 19 (2003) (“Plug and Play Order”). See 18 FCC Rcd at 20926-20944, Appendix B. See also *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 518, 531-609, Appendix B (2003). FNPRM at 2 n.9-10.

⁵ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Second Report And Order, 20 FCC Rcd 6794 (rel. Mar. 17, 2005) (“2005 Deferral Order”).

that was promised in early 2005 by the CEOs of two major cable operators has not occurred, yet the Congress has moved from a “soft” DTV Transition date to a “hard” one of February 17, 2009. CEA agrees that, therefore, there is an increase in the “urgency of examining proposed bidirectional standards at this time.”⁶

CEA has demonstrated in a related proceeding⁷ that competitive products have a vital role to play in helping to transition cable customers to all-digital services, so that bandwidth-inefficient analog signal carriage can be phased out. The relevance of Digital Cable Ready products to the DTV Transition can be summarized succinctly:

- It makes little sense for cable operators – especially capital-starved small operators who have inundated the Commission with waiver requests – to be furnishing each consumer with several special-purpose, redundant, limited capability set-top devices for which consumers ultimately must pay one way or the other, when only a small fraction of the television receivers capable of deploying CableCARDS are actually furnished with CableCARDS.⁸
- To speed the DTV transition and to comply with consumer preferences, the Commission needs to require the cable industry to allow the competitive market to furnish consumers with what they *want*: a range of multipurpose products that allows consumers to select precisely the set of digital devices and services that they want and need.

A solution that allows consumers to select the products and the services that they need and want, in aid of the DTV Transition, is what CEA proposed in its November 7, 2006 filing, on which the Commission has requested public comment.⁹ No such solution appears in the NCTA

⁶ FNPRM ¶ 7.

⁷ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commissions’ Rules*, CS Docket No. 98-120, Comments of the CEA on Second Further Notice of Proposed Rulemaking (July 16, 2007).

⁸ *See* FNPRM at 3 n.12.

⁹ *Id.* ¶¶ 8-9.

filing of November 30, 2005, on which the Commission also requested comment.¹⁰ That NCTA filing, like the Commission's March 17, 2005 Deferral Order, was made *before* the Congress established a hard date for the DTV Transition.

II. CEA'S NOVEMBER 7, 2006 PROPOSAL BUILDS ON THE CABLE INDUSTRY'S PLANS FOR IMPLEMENTING THE OPENCABLE APPLICATION PLATFORM ON A NATIONAL BASIS, BUT ALSO SUPPORTS ADDITIONAL COMPETITIVE ENTRY TO GIVE CONSUMERS MANY MORE OPTIONS AS TO DEVICES AND SERVICES IN THE CONTEXT OF THE DTV TRANSITION.

NCTA's November 30, 2005 filing essentially offers the *status quo* of cable industry specifications and license offers, and asks the Commission to confirm them as adequate.¹¹ CEA's own proposal of that date,¹² as updated and made more specific by the November 7, 2006 proposal on which the Commission has now asked for public comment, provides for a more diverse set of choices for consumers. Key elements of this November 7, 2006 proposal are:

¹⁰ *Id.* ¶¶ 10-11.

¹¹ See *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Letter from Daniel L. Brenner, Senior Vice President, Law & Regulatory Policy, NCTA to Marlene H. Dortch, Secretary, FCC, Re: CS Docket No. 97-80: Report of the National Cable & Telecommunications Association on Two-Way (Interactive) Digital Cable Ready Televisions (Nov. 30, 2005) ("NCTA Nov. 30, 2005 Letter").

¹² The NCTA Nov. 30, 2005 Letter referenced by the Commission in the FNPRM was an appendix to a joint CEA-NCTA status report, as requested of each industry by Media Bureau staff. CEA's appendix discussed how and why the extant cable industry regimes were insufficient to support competition or to satisfy consumers. CEA, like the NCTA, provided a draft set of regulations, several of which depended on anticipated refinement of industry specifications and standards. *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Consumer Electronics Appendix to Joint Status Report to FCC (Nov. 30, 2005). In the Nov. 7, 2006 filing on which the Commission asks public comment, CEA provided more specific proposals, updates achievable in the near term, and specific appendices. See *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Letter from Brian Markwalter, V.P. Technology and Standards, CEA, *et al.*, to Marlene H. Dortch, Secretary, FCC, Re: CS Docket No. 97-80, Proposal for Bi-Directional Digital Cable Compatibility and Related Issues (Nov. 7, 2006); Letter from Brian Markwalter, V.P. Technology and Standards, CEA, *et al.*, to Kevin J. Martin, Chairman, FCC, Re: CS Docket No. 97-80, Proposal for Bi-Directional Digital Cable Compatibility and Related Issues ("CEA Nov. 7, 2006 Proposal"). The CEA Nov. 7, 2006 Proposal consists of a letter from Brian Markwalter to Secretary Marlene H. Dortch, a letter from Brian Markwalter to Chairman Kevin J. Martin, and Attachments A-B.

- Competitive entrants from the consumer electronics and information technology industries, like their established cable industry vendor and operator competitors, should be able to provide consumers with a range of two-way devices.
- Licenses¹³ and specifications that are *compliant* with existing FCC regulations need to be offered so that these devices can be built and enter the market. Both a national security interface, *and* a menu and feature set to support a range of features comparable to those offered by cable operators (and that can be built into television receivers and multi-purpose products) are necessary, but have been withheld from competitive entrants by the cable industry.
- Consumers who obtain content from a variety of sources should be able to select from an integrated program guide, rather than have cable guide data withheld from their devices.
- Devices purchased or rented by consumers should operate lawfully on a home network, free of obstacles or impediments imposed by cable operators via licensing restrictions on the capabilities of navigation devices.
- Cable operator resistance to offering licenses and technical specifications that satisfy these consumer and competitive needs have been grounded in demanded warranties against “harm to the service,” and in “Compliance Rules” and CableLabs interpretations thereof. These provisions and interpretations are contrary to the core navigation device regulations adopted by the Commission in 1998.¹⁴

Neither CEA’s November 30, 2005 appendix nor its November 7, 2006 letter would disturb or prevent the cable industry’s progression to an OpenCable Application Platform architecture (also known as “OCAP”) that facilitates device interactivity and the writing of applications across a variety of cable systems nationally. To the contrary, CEA’s proposals have sought assurances – which CEA still seeks – that this technology will be implemented in

¹³ The Commission, in a Declaratory Ruling on September 18, 2000, in CS Docket 97-80, said it would make determinations about whether licenses are in compliance with its regulations on a case by case basis and said licensees may file petitions challenging particular provisions believed to be out of compliance with 47 C.F.R. § 76.1200 – 1205. *See Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Further Notice of Proposed Rulemaking and Declaratory Ruling ¶ 29, 15 FCC Rcd. 18199, 18211 (rel. Sept. 18, 2000). It was on such basis that CEA, on behalf of its members, filed a model “PHILA” license in 2002, which served as a basis of the “DFAST” license later negotiated with the cable industry and jointly filed as part of the “Plug & Play I” framework, in lieu of testing provisions after the fact via licensee petition. A similar process is necessary to achieve a two-way Plug & Play framework that CEA can agree complies with FCC regulations, and that can be implemented with the expedition that CEA agrees with the Commission, is now necessary.

¹⁴ 47 C.F.R. §§ 76.1200 – 1205.

sufficient scope, scale, and common reliance as to justify the investment and risk inherent in relying on it at the core of a consumer television display or receiver. OCAP development and stability, however, are *necessary but not sufficient* to achieve the sort of competitive environment that would aid the DTV Transition at the present crucial time.

What is needed, additionally, and what CEA and its members have sought in several years of negotiations, is cable industry support for specifications and product licenses that give consumers a wider range of choices with respect to –

- The media sources and streams they can tap in a single device via a single menu and remote control –
- The levels of device sophistication and expense chosen by the consumer to meet the needs and viewing intentions of a particular household –
- Simplicity and reliability of operation, and
- Industry standard connection to other freely competitive products via home networking.

With its November 7, 2006 filing CEA provided two appendices laying out more specifically the elements of a framework that would support real and diverse competitive entry, via support for an additional competitive category of “Digital Cable Ready-Plus” (“DCR-Plus”) products, that have such attributes. In these Comments CEA provides in appendices a draft regulatory, licensing, and technical context to serve as a basis for expeditious action by the Commission to support market entry in this enhanced range of competitive devices, and also to provide metrics and dates for affirmative cable industry support of OCAP devices for which limited capability licenses are presently on offer.

III. THE COMMISSION’S “TWO-WAY” REGULATIONS SHOULD COMPRISE A SPECIFICATION AND LICENSING FRAMEWORK THAT BUILDS ON THE FRAMEWORK FOR “ONE-WAY” DEVICES AND IS COMPLIANT WITH EXISTING COMMISSION REGULATIONS.

To provide for both competitive entry and a contribution to cable’s role in the DTV transition, the Commission needs to build reliably on the framework established for one-way devices. The key elements, from the standpoint of potential “two-way” entrants, must be:

- A reliable and nationally interoperable security interface that is commonly relied upon by operator-supplied and entrant-supplied devices.
- Product licenses, and interpretations thereof, that comply with 47 C.F.R. §§ 76.1200 – 1205 and therefore will not be used to limit, frustrate, or derail investments in competitive entry.
- Commission regulations that define and support the reliable operation of two-way products on digital cable systems.

The Commission recognizes in this Third FNPRM¹⁵ that its 1998 Report & Order, which set July 1, 2000, as the date for cable operators to furnish separate security modules, was not effective because it did not entail all necessary elements.¹⁶ The Commission cannot afford to settle again, at this critical time, for any vague or nominal solutions. The Commission also needs to build on its experience with the regulations and licenses that comprised the “Plug & Play I” framework. CEA casts its Comments and its specific proposals as so doing.

¹⁵ FNPRM ¶¶ 3-4.

¹⁶ Even the obligation to be prepared to supply “POD” modules, pledged in cable operator letters to the Commission, proved empty in 2001 in the absence of a defined specification and licensing regime. Indeed, in early 2004 when CEA members came to CableLabs for the first “certification wave” they found that CableCARD specifications and firmware were even then not stable. *See Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Letter from Robert S. Schwartz, Counsel, Consumer Electronics Association to Marlene Dortch, Secretary, FCC, Notice of Ex Parte Presentations (Mar. 24, 2006); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Letter from Julie M. Kearney, Sr. Dir. and Regulatory Counsel, CEA to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte Presentations (Mar. 23, 2006).

IV. CEA PROVIDES DRAFT SPECIFICATION REFERENCES, REGULATIONS, AND MODEL LICENSES COMPLIANT WITH FCC REGULATIONS, TO COMPLETE ITS NOVEMBER 7, 2006 FRAMEWORK AND TO PROVIDE A BASIS FOR DECISIVE ACTION BY THE COMMISSION IN AID OF CONSUMERS AND THE DTV TRANSITION.

To meet the urgent need identified by the Commission, CEA provides the same elements as were provided in the first Plug and Play framework and were accepted by the Commission – draft regulations, normative and technical references, and model licenses that comply with existing Commission regulations. By submitting these documents in its initial comments, CEA assists in affording opportunity for public comment, in Reply Comments and in any further *ex parte* comments, so as to expedite final action by the Commission.

A. The Framework Proposed By The NCTA On November 30, 2005, And Still Advocated By NCTA, Is Inadequate To Meet The Goals Set Forth By the Commission In This FNPRM.

As requested by the Commission, CEA provides comments on the proposal made by the NCTA in its letter of November 30, 2005. That letter contained a set of draft revised regulations which included dates for accomplishing CableCARD and OCAP-related objectives, several of which have already passed without those objectives having been met.¹⁷ As to specifications, the only ones cited with respect to “Interactive Digital Cable Ready” products were the then-current versions of CableCARD and OCAP specifications. As to what would constitute “support” for devices built to these or successor specifications, the NCTA draft suffered from the same omission as the Commission has acknowledged about its own 1998 R&O and regulations: no specificity. Simply, the NCTA would leave *all* to CableLabs’ present and future discretion:

¹⁷ NCTA Nov. 30, 2005 Letter.

§76.641 Support for Interactive Digital Cable Ready Products on Digital Cable Systems.

(f) A digital cable system is deemed to meet the foregoing requirements if it meets successor specifications published by the testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States for interoperability with successor specifications applicable to interactive digital cable products.

Essentially, this means that whether or not the cable industry is *actually supporting* Interactive Digital Cable Ready products – even within the narrow offerings as defined only by Multistream CableCARDs (“M-Cards”) and OCAP – is to be judged, at any given time, solely by the industry’s *own laboratory*, which is given sole discretion to set such specifications.

Accepting as complete or sufficient the approach set forth in these 2005 draft regulations would be the same recipe for disaster that the Commission followed a decade ago.

The Commission in this Third FNPRM has itself recognized that such an approach has been largely responsible for years without progress.

CEA also submitted draft regulations with its own Appendix to the joint November 30, 2005 filing. CEA’s draft regulations went beyond those filed by the NCTA in several respects:

- Substantively, they reflect the need, already evident but not yet acknowledged by the cable industry, for at least some interactivity with cable headends by *all* Digital Cable Ready products.
- Like the 2003 Plug & Play I regulations, CEA would rely on references to industry standards rather than on unilateral CableLabs discretion, but recognized that such standards must be anticipated in several respects.
- CEA would require cable operators to field navigation devices that *also* rely on OCAP – a common reliance obligation to which NCTA, despite all verbiage about OCAP, has studiously avoided agreeing. CEA would also require testing of OCAP applications on competitive entrant, *as well as* operator-supplied, navigation devices, and backward compatibility of new OCAP implementations.

Given the expedited timeframe in which the Commission sees the necessity of action, CEA recognizes that references in both its own draft regulations, and any now proposed by the

cable industry, must become more specific than they were in 2005. *The Commission and the public cannot afford another process that allows the cable industry to be the sole determinant of its own level and adequacy of “support” for the products that compete with that industry’s own proprietary products.* Conversely, CEA recognizes that while standardization is vital, the near-term nature of what must be accomplished requires reference to specifications as well as standards. This is the context in which CEA, in these Comments, further comments on the 2005 NCTA draft regulations by providing its own draft set of regulations, as well as specific and normative references and draft model licenses that would comply with existing Commission regulations.

B. CEA Provides As Appendix A Draft Regulations So As To Provide A Comprehensive Solution For National Support Of OpenCable Application Platform Products And Additional Competitive Products, That Can Be Implemented Expeditiously By The Commission In This Rulemaking.

CEA, as its comments on the NCTA 2005 proposal, and in aid of expeditious action by the Commission, provides as Appendix A a set of draft regulations in aid of a complete two-way framework. It is vital, at this time, for the Commission to promulgate regulations that provide guidance as well as discipline. If the cable industry, in the period leading up to a Report & Order by the Commission, will cooperate in accepting technical references in aid of the DTV Transition, consumer choice, and competitive entry, these regulations can succeed in achieving the goals set out by the Commission in this Third FNPRM.

Key areas in which CEA has revised NCTA’s Nov. 30, 2005 draft regulations, so as to better address and serve these goals and consumer needs, are –

- An expanded competitive palette of products developed and supported as “Interactive Digital Cable Ready.”
- Specific and objective requirements for support of such products by cable operators, including elements of common reliance.

- Firm and achievable deadlines to assure a regime on which both consumers and competitive entrants can rely.
- Provision for adequate field and application testing, also to assure that this framework is reliable in the real world.

C. It Is Vital That Cable Industry Licenses Conform To Commission Regulations That Were Aimed At Enabling Competition And Expanding Consumer Choice.

In the years leading up to “Plug & Play I,” CEA and some others complained that the “PHILA” license – the only one then offered by CableLabs-imposed restrictions and terms beyond the bounds of those permissible under 47 C.F.R. §§ 76.1200 – 1205. Nevertheless, in order to maintain the pace of product development believed essential for competitive reasons, several member companies felt constrained to sign the only license on offer. As a result of discussions with FCC staff, CEA addressed this problem by filing a “model PHILA” license, along with a memorandum explaining why CEA believed the model license would be compliant in areas in which PHILA was not. Rather than press or petition for a ruling, CEA then joined in negotiations with the cable industry that led to the Plug & Play I framework, including the DFAST license, which was based directly on CEA’s model PHILA.

A similar situation obtains today. CEA maintains its position that the extant CHILA and O-ILA licenses, the only two-way licenses offered by CableLabs, exert controls and limitations on licensees that extend well beyond those permissible under existing Commission regulations.¹⁸ There is no alternative for any company wishing to pursue the cable industry’s favored technology.

¹⁸ CHILA stands for “CABLECARD-Host Interface License Agreement”; O-ILA stands for “Opencable Application Platform (OCAP) Implementer License Agreement”. The panoply of CableLabs licenses necessary to get a product on the market may be downloaded from CableLabs’ OpenCable Website, <http://www.opencable.com/documents/>.

In addition, the CHILA and O-ILA licenses as commended to the Commission in that filing place inappropriate and onerous burdens on competitive entrants. They would limit the licensee's ability to innovate by maintaining an environment that stifles a licensee in a number of ways, including requiring vague warranties against "harm to the service," whereas FCC rules only allow protection of the network against electronic harm or theft of service (including, under some circumstances, copy protection). Compliance Rules that enforce permissible limitations also over-reach. Moreover, a licensee is not able to place a product on the market immediately. The CableLabs bi-directional licenses subject the licensee to a certification requirement that is at the sole discretion of CableLabs. A licensee's product can be denied market access without any recourse or ability to bypass such a process.¹⁹ A licensee has no reasonable or just venue to participate in or challenge changes implemented by CableLabs to the Compliance Rules or Robustness Rules, or to challenge a refusal to adopt additional output protection technologies. These and other provisions that overstep Commission regulations are addressed in CEA's Appendices B-2 and B-3 to these Comments.

The NCTA November 30, 2005 filing on which the Commission asks comment refers extensively to and relies on, as integral to NCTA's proposed framework, these CHILA and O-ILA licenses.²⁰ Accordingly, as an essential element of its comments in response to this FNPRM, CEA submits for public scrutiny, in Appendix B, its own model licenses that would implement the framework resulting from this FNPRM and would correct these and other

¹⁹ CHILA § 5, Testing and Certification (June 4, 2007) at CableLabs' OpenCable Website, <http://www.opencable.com/downloads/CHILA.pdf>.

²⁰ Almost contemporaneously, NCTA filed a "DCAS" license as well. See *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Letter from Daniel L. Brenner, Senior Vice President, Law & Regulatory Policy, NCTA to Marlene H. Dortch, Secretary, FCC, Re: CS Docket No. 97-80: Report of the NCTA on Downloadable Security (Nov. 30, 2005). CEA and its members have been critical of the CableLabs approach to DCAS and, as CEA noted in its November 30, 2005 Appendix, major elements of DCAS technology are under "NDA" (and remain so today) and not available for review with the Commission. Hence, CEA has not submitted model text as to this license. CEA addresses other separable security issues further below.

provisions that over-reach existing Commission regulations that were adopted to protect licensees from just such abuse. *Without a “level playing field” license that complies with Commission regulations, all other efforts in aid of competitive entry, and thus in implementation of Congress’s instruction to the Commission, must fail.*

V. CEA’S COMPREHENSIVE FRAMEWORK PROVIDES A BASIS FOR COMPLIANT CONDITIONAL ACCESS PROGRAM DELIVERY BY OTHER WIRED MVPD SERVICES.

The Commission seeks comment on whether the sort of “enhanced module” approach floated by the NCTA in a recent *ex parte* letter might also serve as a basis for enhancing navigation device availability for MVPD services other than cable. CEA believes that such potential exists, *provided* that any such approach would not impair the expeditious implementation of CEA’s November 7, 2006 proposal as supported by these CEA Comments. CEA sees nothing standing in the way of accomplishing this – though perhaps not on the same schedule on which the core implementations, discussed above, may be achieved.

A. The Issue Of Compliant Conditional Access Delivery Of IP-Based Services Has Been Raised In Docket No. 97-80 And Can Be Addressed By The Commission In This FNPRM.

Even had it not been raised in this FNPRM, the Commission is on course to consider issues of conditional access and separate security in the course of dealing with petitions and applications in Docket 97-80. The issue has been raised by IP-service providers both via petition and waiver application.²¹ In the latter context, the Commission has allowed additional time for

²¹See, e.g., *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, Memorandum Opinion and Order Appendix (rel. June 29, 2007).

compliance, without yet making core determinations.²² It is thus appropriate for the Commission to receive public comment, in the context of this FNPRM, as to possible interoperable solutions.

B. A Separable Security Solution That Is Not National And Interoperable In Scope And Scale Is No Solution At All.

In the context of commenting on waiver applications, CEA has addressed a key issue raised by IP system operators and others – whether a “downloadable” security implementation is compliant if it fails to provide for a single, nationally interoperable interface. CEA emphasized its concerns over this issue in Comments filed in July:

The chipsets and firmware necessary for navigation devices to implement “downloadable” security are not themselves “downloadable.” Rather, the electronic interface for each system would have to be separately engineered and built into the hardware and software of any television or other navigation device. If there can be any number of such “downloadable” systems – indeed, if more than one – any advantage of separable security would be lost, as there would still be no common security interface. The navigation devices would be no more, and perhaps less, nationally portable than are present integrated-security set-top boxes. And, as in the case of present set-top boxes, a different and perhaps incompatible license would be required from each system vendor. Thus, despite all of its efforts to assure competitive navigation devices via separable security, *a national patchwork of different “downloadable” systems would put the Commission back where it started a decade ago – with individual, proprietary security solutions posing a fundamental obstacle to competitive entry.*²³

CEA emphasizes that if a two-way framework does not include a nationally interoperable security interface, it is likely not to matter what its other attributes may be.

²² *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, Memorandum Opinion and Order (rel. June 29, 2007) (“Consolidated Order”).

²³ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7218-Z-CSR-7222-Z, CSR-7227-Z, Comments of the CEA on Six Requests for Waiver of 47 C.F.R. § 76.1204(a)(1) (July 5, 2007) (emphasis in original).

C. The Telephone Industry Is Already Working On A CableCARD-Based Solution Consistent With CEA's Proposed Framework.

Apparently also in response to the Commission's focus on competitive entry in the navigation device market and the DTV Transition, ATIS, a telephone industry standards body, is working on a CableCARD-based approach to separable security, for IP-based MVPD systems.²⁴ Therefore, it appears to CEA that the Commission's goal of extending interfaces to other MVPDs, at least in the wired context, may be feasible.

D. A Separate Timetable For Implementation Re IP-Services May Be Necessary And Would Be Consistent With The Commission's Approach To Date.

The Commission has recognized in its waiver determinations that additional time may be necessary for the implementation of IP solutions in the navigation context.²⁵ Any such solution and schedule should not detract from achieving the proximate cable-related goals, now in process for a decade, cited by the Commission in this FNPRM, on the schedule that the Commission aims to achieve.

VI. CEA IS WILLING TO WORK WITH THE CABLE INDUSTRY AND OTHERS ON ADDITIONAL ENHANCEMENTS THAT OPEN NEW COMPETITIVE OPPORTUNITIES.

While the FNPRM refers to NCTA's ideas, as expressed in an *ex parte* letter of June 5, 2007,²⁶ in the context of "non-traditional cable operators and other MVPDs," the NCTA letter in question *also* touts the utility of such an approach in the context of "traditional" cable systems. Hence CEA comments on this idea in that context as well, as well as in contexts beyond

²⁴ ATIS Home Page, <http://www.atis.org/>; ATIS News Release, <http://www.atis.org/PRESS/pressreleases2007/061307-2.htm>.

²⁵ Consolidated Order ¶¶ 55-64.

²⁶ FNPRM ¶ 13 n.28. Letter from Neal M. Goldberg, Vice President and General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, Re: CS Docket No. 97-80 (June 5, 2007).

“traditional” cable services. CEA is willing to cooperate in developing such options for interested MVPDs, provided that such an approach (a) is understood not to detract from timely implementation of the proposals CEA makes herein, (b) exposes services to the home network via industry standard interfaces, as the Commission proposes, (c) includes the compliant licensing of the necessary technologies and the provision of information so as to *enable competitive entrants* to build and market any necessary devices, including any “modules,” and (d) therefore provides for separable security according to a nationally standard security interface.

A. The Additional Approaches Sketched In The 2007 NCTA *Ex Parte* Filing On Which The Commission Has Requested Comment, If Implemented Via Separable Security, Are Not Fundamentally Inconsistent With CEA’s Proposed Framework And May Provide New Competitive Options.

In the context of cable services, NCTA’s June 5, 2007 letter, on which the Commission has requested comment, suggests at page 4 that an “Enhanced Separate Security Device” could contain the hardware necessary to implement OCAP in the cable context, and could contain other navigation hardware for other cable services. NCTA further suggests that a more complicated approach would involve a “gateway” device “that could transmit MVPD programming onto home networks.” The NCTA idea, however, does not address several issues that are key for CEA members and are likely important to other potential entrants:

- What would be the interface between any such module or gateway device and competitive devices? Without any *interface providing for data and data flows*, the proposal would essentially be for a set-top box “about the size of an iPod.” In 1998 the Commission ordered MVPDs to separate security functions from non-security functions – thus *rejecting* General Instruments argument that “the statute does not authorize the Commission to involve itself in questions regarding the manufacture of navigation devices, but only seeks to ensure competition in the retail distribution of navigation devices to consumers, so that consumers have an alternative distribution source from which to obtain equipment.”²⁷

²⁷*Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Report and Order ¶ 129 (rel. June 24, 1998).

- In a “gateway” approach, what would be the interfaces and data flows to the home network, and how dependent would such interfaces and flows be on the service provider’s own definition of its “service?” CEA has consistently taken the position that the cable industry has nowhere been granted any inherent monopoly over program guides that include listings of cable services, or over the home network enjoyment of cable programming (providing that copy protection issues are addressed in accordance with Commission Encoding Rules). The necessity of providing for open data flows to the home network is discussed in the next section.
- Would any necessary “modules” themselves be open to licensed production by competitive entrants? Such modules would need to be subject to a national, separate security interface. The necessity of providing for such licensing, and such an interface, is discussed further below.

B. An Important Element Of This Or Any Other Navigation Device Implementation Is The Exposure Of Services To The Home Network In Standard, Interoperable Formats.

The NCTA suggestion does not address the interface between any “gateway” device and the home network to which it would contribute. The importance of specificity here is underlined by the fact that the Commission until a few days before this filing had before it a petition to compel CableLabs to approve one such interface under the DFAST license.²⁸ According to the petitioners, CableLabs had declined to grant such approval for more than two years, despite compliance with the metrics that appear on the face of the license and its Compliance Rules. The Petitioners alleged that in the absence of additional restrictions that would improperly extend cable operator control into and over the home network, and would impair the usefulness of the network itself, approval was withheld. The approvals belatedly granted by CableLabs may resolve specific issues between those parties, but not the more fundamental question of whether,

²⁸ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, PP Docket No. 00-67, Petition of Digital Transmission Licensing Administrator LLC: Appeal of CableLabs Refusal to Approve DTCP-IP as a Digital Output Protection Technology (Feb. 26, 2007).

in light of its past arbitrary conduct, CableLabs may be entrusted in the future with primary responsibility over downstream technologies essential to the home video network.

As the Commission notes in its FNPRM, CEA did address this issue in its November 7, 2006 proposal. While CEA's proposal was that the output of licensed two-way host devices be "fully compatible with DLNA home networks,"²⁹ the necessity for such a requirement is equally apparent and vital in the context of any gateway and (depending on the interfaces to be specified by NCTA) perhaps any "module" approach.

C. To Avoid Vendor Nullification, The Ability To Build Modules As Well As "Hosts" Must Be Open To Competitive Entrants On Terms That Comply With FCC Regulations.

In the avalanche of waiver applications by cable operators on which CEA has been obliged to comment in Docket No. 97-80, cable operator after cable operator expressed willingness to implement CableCARD-reliant navigation devices, but decried the fact that the operator's sole vendor had – despite a decade's lead time – chosen not to engineer a low-cost, CableCARD-reliant set-top box. These operators sought waivers on the basis that they were hostage to such vendor decisions, because they could not afford to buy set-tops that were more fully featured (hence much more expensive) than those that their customers actually required. In its Comments on such waiver requests,³⁰ CEA referred to this circumstance as "**vendor nullification.**"

²⁹ FNPRM ¶ 8.

³⁰ See, e.g., *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Comments of the CEA on Knology, Inc. Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (May 24, 2007); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Comments of the CEA on Requests for Waiver of 47 C.F.R. § 76.1204(a)(1) by Operators in Non-Contiguous U.S. Areas (May 24, 2007); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Comments of the CEA on Great Plains Television, Inc. Petition for Waiver of 47 C.F.R. § 76.1204(a)(1) (June 14, 2007).

MSOs are subject to FCC regulations; their vendors generally are not. Repeatedly, CEA members have suffered from instances of operators' vendors declining or failing to provide necessary or timely levels of support. Now, a group of mostly smaller cable operators have as well. Therefore, *CEA could not support any proposal for entirely new navigation device equipment if competitive entrants will not also be licensed to build that equipment* – both because any such devices *should* be open to competition, *and* because CEA members, like these smaller cable operators, have learned the hard way that the dominant suppliers to the industry can simply decline to build devices on which CEA members or smaller cable members may want or need to rely.

CEA members have also learned, the hard way, that licenses for any such products need to comply with existing Commission rules that limit the impositions on competitive entrants. This requirement is discussed throughout these CEA Comments.

D. Any Additional Modular Approach To Navigation Devices Must Be Based On Security Separate From The Other Module Functions, As A Consequence Of The Requirement That Entrants Must Be Able To Build Modules.

For competitive entrants to be able to be licensed to build modules or gateway devices that will function on diverse systems nationally – an original objective of the CableCARD as well as one objective of OCAP – there must, for the reasons discussed above in section V.B., be a national separate security system and interface via which the unique conditional access techniques for each local system can be implemented. Hence, this must be a requirement of any module / gateway approach.

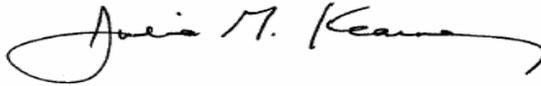
E. Any Additional Cable-Centric Or Pan-MVPD Approach Must Not Detract From Focus On Near-Term Support For Competitive Entry Via Separate Security And The Other Elements Of CEA's Proposed Framework.

While CEA is open to the ideas discussed herein, we emphasize that in exploring any such idea the Commission must not lose sight of the proximate objectives outlined at the outset of this Third FNPRM. Repeatedly, CEA has heard, in response to proposals it has made to the cable industry, that choices must be made to allocate limited available engineering and other resources. In pursuing any such additional approach as discussed in this section, the Commission must receive specific assurances (1) as to the allocation of resources, and (2) that implementation will not slow the vital, main objectives discussed in this Third FNPRM.

VII. CONCLUSION.

CEA applauds the Commission's focus on two-way Digital Cable Ready products as keys to the DTV Transition. This Third FNPRM represents a vital, and perhaps the last, opportunity to fulfill Congress's instruction, in Section 629, to anticipate and support the DTV Transition via consumer choice and competitive entry. CEA and its members pledge their cooperation with the Commission in achieving a result from this proceeding that enhances, rather than constricts, consumers' choices at this crucial time.

Respectfully submitted,



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Appendices

The following Appendices are filed contemporaneously (as separate electronic files) as integral appendices to these CEA Comments:

Appendix A: CEA's Proposed Draft Amendments to Regulations, filed as Appendix A to CEA Comments on Third Further Notice of Proposed Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, August 24, 2007.

Appendix B-1: CEA's Proposed Draft Model amended DFAST License, filed as Appendix B-1 to CEA Comments on Third Further Notice of Proposed Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, August 24, 2007.

Appendix B-2: CEA's Proposed Draft Model "i-DFAST" License, filed as Appendix B-2 to CEA Comments on Third Further Notice of Proposed Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, August 24, 2007.

Appendix B-3: CEA's Proposed Draft Amendments to "O-ILA" License, filed as Appendix B-3 to CEA Comments on Third Further Notice of Proposed Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, August 24, 2007.

Appendix C: CEA's Technical Standards and Specifications, Access to Basic Interactive Services, filed as Appendix C to CEA Comments on Third Further Notice of Proposed Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, August 24, 2007. Also available at www.ce.org/publicpolicy.