

**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
)	

**REPLY COMMENTS OF SONY ELECTRONICS INC.
THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**

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Executive Summary

In these reply comments, Sony Electronics Inc. (“Sony”) reiterates its support for the two-way plug-and-play proposal submitted by the Consumer Electronics Association (“CEA”). This proposal (the “CEA Proposal”) represents the best solution for enabling competitive navigation device access to basic two-way cable services that can be implemented by cable operators and consumer electronics (“CE”) manufacturers in time for the digital television (“DTV”) transition.

The competing proposal submitted by the National Cable and Telecommunications Association (“NCTA”), and the “OCAP/CHILA regime” that it includes, should be rejected. The practical effect of this proposal (the “NCTA Proposal”) is for the Federal Communications Commission (“FCC” or “Commission”) to abdicate its statutory responsibility to implement Section 629 of the Communications Act of 1934, as amended, and to transfer that authority to a cable-industry controlled entity, CableLabs, with no oversight or checks-and-balances to ensure protection of the public interest. A true effectuation of Congressional intent demands a much more substantial role for the Commission. Congress did not intend to pass a law to open up a closed market for cable navigation devices, a market that is almost wholly-dominated by the cable industry, only to have the Commission cede control of that market to the same industry. Because the OCAP/CHILA regime will not deliver a competitive market for consumers, and for other reasons described in Sony’s reply comments, the NCTA Proposal should be rejected.

The OCAP/CHILA regime that is at the heart of the NCTA Proposal is flawed in at least four respects. First, it will not create a competitive market as required by Section 629. Second, OCAP/CHILA will harm consumers because it ties all currently and subsequently available cable services into a single, non-severable bundle, thereby forcing purchasers of competitive

navigation devices to take and pay for cable services that they may not want or use. Third, OCAP/CHILA does not align the operational interests of cable service providers with their competitors – a principle traditionally known as “common reliance.” Absent common reliance, any approach for bi-directional retail device compatibility selected by the Commission will necessarily fail. Finally, and most distressingly, the OCAP/CHILA regime ultimately amounts to a request that the Commission abdicate its statutory responsibility to implement Section 629 to a private and self-interested entity, CableLabs, and allows for no Commission oversight or checks-and-balances to ensure protection of the public interest. For all of these reasons, the Commission must reject the NCTA Proposal.

In contrast, the Commission should adopt the CEA Proposal because it imposes the smallest burden on the cable industry while providing consumers and manufacturers with the protections needed to create a competitive market and innovative two-way plug-and-play devices. Contrary to the claims of the cable industry, consumers will not be confused by the additional choice afforded to them if the Commission adopts the CEA Proposal. In addition, the CEA Proposal will not hinder the ability of the cable industry to innovate. Instead, perhaps against interest, the CEA Proposal would create an environment for a long and difficult marketplace battle between OCAP and DCR+. Neither side’s advocates would be able to guarantee victory at the outset, but one thing is certain: consumers would choose the winner.

Interestingly, the viability of the CEA Proposal and DCR+ is proven by the cable industry’s own switched digital video solution outlined in their comments. Aside from the different form factor, the NCTA’s “Tuning Resolver” is architecturally indistinguishable from the DCR+ M-Card proposed by CEA.

Finally, content protection remains a priority for Sony and other CE companies. The Commission must strike a delicate balance between the interests of content providers and consumers. With respect to the content protection issues raised in the comments, Sony believes the Commission should proceed cautiously and should: (1) prohibit selectable output controls unless the need for such controls in limited circumstances is proven through a waiver; (2) require that new content output technologies are approved through a fair and open process in which all interested parties are represented and have a voice; (3) maintain the current encoding rules which strike the correct balance for consumers, content providers and multichannel video programming distributors (“MVPDs”); and (4) refrain from mandating a new usage rights signaling regime at this time.

The cable industry and Motion Picture Association of America (“MPAA”) ask the Commission to further abdicate regulatory authority over plug-and-play by relinquishing control over content protection and content outputs to CableLabs, with only the MPAA having a meaning voice on such matters. Although Sony understands and respects the consequence of this issue, and in fact repeatedly notes, in both its direct and reply comments, the importance of ensuring the use of “effective and robust” content protection, the Commission should not abide a process for the approval of content protection outputs in which only the cable and motion picture industries determine the fundamental technologies and rules that affect when, what, and where a consumer can enjoy her lawfully obtained content. Indeed, Sony seeks only the same rights and privileges that the cable industry and MPAA benefit from in other similar contexts: the ability for device manufacturers and consumers to play a reasonable but meaningful role in the content protection approval process and the right to appeal adverse results to a neutral decision maker.

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REPLY COMMENTS OF SONY ELECTRONICS INC.

Sony Electronics Inc. (“Sony”) hereby replies to the comments filed in response to the Third Further Notice of Proposed Rulemaking (“*Third FNPRM*”) in the above-captioned proceeding.¹ Sony reiterates its support for the Consumer Electronics Association (“CEA”) proposal that was initially submitted in an *ex parte* filing on November 7, 2006,² and was further refined in CEA’s initial comments to the *Third FNPRM* (together, the “CEA Proposal”).³

The Federal Communications Commission (“FCC” or “Commission”) must reject the proposal set forth by the National Cable & Telecommunications Association (“NCTA” and the

¹ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 12024 (2007) (“*Third FNPRM*”).

² *See id.*, Appendix B, Letter from Brian Markwalter, Vice President, Technology and Standards, Consumer Electronics Association, et al., to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 7, 2006) (“*Initial CEA Proposal*”).

³ Comments of the Consumer Electronics Association, CS Docket No. 97-80, PP Docket No. 00-67 (filed on August 24, 2007) (“CEA Comments”).

“NCTA Proposal”),⁴ and the OCAP/CHILA regime inherent in that proposal. The practical effect of the NCTA’s proposal, supported by the Cable Commenters,⁵ would be for the Commission to abdicate its statutory responsibility to implement Section 629 of the Communications Act of 1934, as amended,⁶ to a cable-industry controlled entity, CableLabs, with no oversight or checks-and-balances to ensure protection of the public interest. A true effectuation of Congressional intent demands a much more substantial, even controlling, role for the Commission. Congress did not intend to pass a law to open up a closed market for cable navigation devices, a market that is wholly-dominated by the cable industry, only to have the Commission cede control of the market to the cable industry. The OCAP/CHILA regime will not deliver a competitive market for consumers. For that reason and others described in these reply comments, the NCTA Proposal should fail.

I. THE COMMISSION CANNOT ADOPT THE OCAP/CHILA REGIME BECAUSE IT WILL NOT CREATE A COMPETITIVE MARKET, IT WILL HARM CONSUMERS, IT DOES NOT REQUIRE COMMON RELIANCE AND IT AFFORDS CABLELABS TOO MUCH CONTROL TO THE DETRIMENT OF COMPETITION.

The Commission must reject the OCAP/CHILA regime that is at the heart of the NCTA Proposal because it is flawed in at least four respects. First, it will not create a competitive market as required by Section 629. Second, OCAP/CHILA will harm consumers because it ties all currently and subsequently available cable services into a single, non-severable bundle, thereby forcing purchasers of competitive navigation devices to take and pay for cable services that they may not want or use. Third, OCAP/CHILA does not align the operational interests of

⁴ See *Third FNPRM*, Appendix C, Letter from Daniel L. Brenner, Senior Vice President, Law & Regulatory Policy, National Cable and Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 30, 2005) (“NCTA Proposal”).

⁵ Comcast Corporation (“Comcast”), Time Warner Cable Inc. (“Time Warner”) and the NCTA.

⁶ 47 U.S.C. § 549.

cable service providers with their competitors – a principle traditionally known as “common reliance”. Absent common reliance, Sony believes that any approach for bi-directional retail device compatibility selected by the Commission will necessarily fail. Finally, and most distressingly, the OCAP/CHILA regime supported by the Cable Commenters ultimately amounts to a request that the Commission abdicate its statutory responsibility to implement Section 629 to a private and self-interested entity, CableLabs, and allows for no Commission oversight or checks-and-balances to ensure protection of the public interest. For all of these reasons, the Commission must reject the NCTA Proposal.

A. The Commission Should Reject The NCTA Proposal Because It Will Not Create A Competitive Market As Required By Section 629.

Through Section 629, Congress directed the Commission to create a competitive market for devices that receive and display cable television services,⁷ because a competitive market will best drive competitors to respond to consumer needs. The Cable Commenters acknowledge as much in extolling the “market-based” nature of the OCAP/CHILA regime in their initial comments to the *Third FNPRM*.⁸ However, instituting a regulatory regime based exclusively on OCAP and CHILA, as the Cable Commenters propose, will NOT create a marketplace of the kind envisioned by Section 629.

⁷ See 47 U.S.C. § 549(a) (“The Commission shall . . . adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.”).

⁸ See, e.g., Comments of the National Cable & Telecommunications Association, CS Docket No. 97-80, PP Docket No. 00-67 (filed on August 24, 2007) at 8 (“NCTA Comments”); Comments of Time Warner Cable Inc., CS Docket No. 97-80, PP Docket No. 00-67 (filed on August 24, 2007) at 22-25 (“Time Warner Comments”); Comments of Comcast Corporation, CS Docket No. 97-80, PP Docket No. 00-67 (filed on August 24, 2007) at 11-14 (“Comcast Comments”).

The OCAP/CHILA regime proposed by the Cable Commenters, if implemented by itself, will create the precise opposite of a market-based solution, by giving a single, private, and self interested source – CableLabs – ultimate control over all of the relevant features of the market for competitive navigation devices. In particular, the OCAP/CHILA regime would grant the cable industry:

- Exclusive control over the “look and feel” of competitive navigation devices when accessing bi-directional cable services, thereby denying consumers the ability to choose the method of presentation that best suites their needs;⁹
- Exclusive control over the software specifications of competitive navigation devices, thereby precluding manufacturers from responding to any consumer demand for alternatives;¹⁰
- Exclusive control over the development of test regimes to ensure competitive navigation device compatibility, including the establishment of pass/fail criteria, and the execution of the testing process itself, thereby determining when or even whether a competitive device will be available to consumers;¹¹ and
- Exclusive control over the availability and nature of content outputs on competitive navigation devices, thereby granting cable operators the ability to limit or alter the functionality of a device after the consumer has purchased it.¹²

In short, the so-called “market” that would result under an exclusively OCAP/CHILA regime would share few, if any, of the characteristics commonly associated with free and open markets. Instead, it would consolidate all relevant decision-making power and control in a single industry, and would remove or at least starkly limit the incentives of this group to respond to consumer needs or the needs of the consumer electronics (“CE”) industry.

⁹ See, e.g., Comments of Sony Electronics Inc., CS Docket No. 97-80, PP Docket No. 00-67 (filed on August 24, 2007) at 14-16 and 18-20 (“Sony Comments”).

¹⁰ *Id.*

¹¹ *Id.* at 26-28 and 18-20.

¹² *Id.* at 14-16 and 18-24.

Perhaps the Cable Commenters consider the OCAP/CHILA regime to be “market-based” because manufacturers can choose whether or not to build and sell OCAP-enabled devices. However, this choice is illusory for two reasons. First, in the absence of an alternative to producing an OCAP/CHILA device, the only choice available to competitive manufacturers is whether to serve the demand for interactive cable-compatible devices at all. Second, roughly sixty percent of the MVPD households in the United States subscribe to cable. Thus, the “choice” presented to CE manufacturers by the OCAP/CHILA regime is best described as: “do it our way, or abandon a 65 million household market to your competitors.” No television manufacturer that hopes to remain profitable can afford to make this choice,¹³ and thus this regime must be rejected by the Commission as anti-competitive.

B. The Commission Should Reject The OCAP/CHILA Regime Because It Is Bad For Consumers.

The NCTA Proposal and OCAP/CHILA is bad for consumers and should be rejected by the Commission because it will force consumers to accept and pay for device functionality and services that they may or may not want.¹⁴ In essence, the NCTA Proposal represents the latest iteration of the monopolistic, traditional cable model. As emphasized by the Cable Commenters in their comments, a cable customer who wishes to purchase an interactive cable-ready device at

¹³ Sony has long been comfortable with operating in competitive markets. The traditional television market alone, for example, consists of as many as eighty different manufacturers, all of whom work endlessly to identify the combinations of price, features and functionality that will best meet consumer desires. Sometimes, Sony succeeds in these competitive markets; sometimes, it fails. What should matter to the Commission is not whether a competitive market is good for Sony, or for that matter good for any other consumer electronics or information technology manufacturer, or good for the cable industry. Instead, the Commission should determine whether the OCAP/CHILA regime, by itself, can create the best result for consumers. Based on the anti-competitive features of this regime noted above, it seems clear that it cannot.

¹⁴ See, e.g., Letter from Kevin J. Martin, Chairman, Federal Communications Commission, to Gary Flowers, Executive Director and CEO, Black Leadership Forum, *et al.*, at 2 (August 22, 2007) (“According to a Nielsen Media Research report, the average cable subscriber is paying for more than 85 channels that she doesn’t watch in order to obtain the approximately 16 channels that she does.”)

retail would have no choice but to purchase a device that includes a full implementation of the OCAP middleware,¹⁵ which would: (1) add to the cost of the device; and (2) enable interactive features that, if given a choice, many – perhaps most - consumers would not elect to purchase. This approach would endorse the narrow interests of the cable industry over consumers and thereby undermine the principal statutory charge of the Commission – to protect the public interest.

The Cable Commenters go to great lengths to describe the variety of new applications and services that the OCAP/CHILA regime would allegedly provide if implemented:

*[The OCAP/CHILA regime] will spark more interactive television content. A common software platform will result in the development and deployment of a wide array of exciting new digital interactive services, including unique applications linked to specific cable channels, such as added viewer information, instant voting and polling, interactive advertising, shopping, games, integration of broadband websites and television, and expanded on-demand content.*¹⁶

The NCTA elsewhere offers additional examples of advanced interactive services that the OCAP/CHILA regime would enable, including on-screen caller ID, remote DVR programming via cell phone, and Time Warner's proprietary StartOver™ service.¹⁷

While extolling the virtues of these new services, the Cable Commenters ignore perhaps the most fundamental consumer consideration: the impact of these services on cable prices. Consumers will certainly pay for these advanced interactive services, albeit not as an additional line-item on their monthly cable bills, but more likely in the form of rate increases, box rental price increases or additional advertising. Indeed, a recent newspaper report cites a cable industry

¹⁵ See, e.g., NCTA Comments at 14-18; Time Warner Comments at 22-25; Comcast Comments at 11-14.

¹⁶ NCTA Comments at 13 (italics in original).

¹⁷ *Id.* at 9.

representative as justifying a 6.1 percent average rate increase on, among other things, “increasing [the system’s] on-demand platform from 1,000 hours to as many as 9,300 hours of programming.”¹⁸ It is easy to see cable operators blaming the inevitable next rate increases on the deployment of future interactive services like instant voting and polling, on-screen caller ID, and remote DVR programming via cell phone.

C. For The Benefit Of Consumers And Device Manufacturers, The Commission Must Reject Any Proposal, Such As The NCTA Proposal, That Does Not Require Common Reliance; Without Common Reliance The Statutory Mandate Of Section 629 Cannot Be Fulfilled.

The Commission should reject the NCTA Proposal and OCAP/CHILA because there is no enforceable, regulatory commitment by the cable industry to actually use the OCAP technology in their own devices. At best, the lack of such a commitment and the absence of common reliance will create uncertainty in the minds of manufacturers and consumers, as both would reasonably consider whether it is worthwhile to invest in an OCAP-enabled device if cable providers have no obligation to use the technology.¹⁹ At worst, it permits cable providers to discard OCAP in their own hardware whenever it is in their business interest to do so, and to convert their devices to a new and presumably better technology, leaving the manufacturers and purchasers of OCAP-enabled products to contend with the minimally supported leftover OCAP market.

¹⁸ “Comcast Raises Cable Rates for Subscribers”, *Houston Chronicle* (Sep. 1, 2007), found at <http://www.chron.com/disp/story.mpl/metropolitan/5100353.html> (last visited Sep. 7, 2007).

¹⁹ The Commission should note that, notwithstanding the cable industry’s efforts to demonstrate otherwise, actual support for the OCAP/CHILA regime among CE and IT manufacturers is lukewarm at best. Of the various companies that the cable industry regularly cites as evidence of such support: two are based in Korea, where OCAP development and deployment are much more advanced; two hold ownership interests in the OCAP technology and are part of a small group of joint licensors, one is under common ownership with a major cable operator, one has received a substantial cash investment from a major cable operator, and the others are largely cable OEM and component manufacturers, who depend on staying in cable’s good graces in order to remain in business. Few, if any, have endorsed the OCAP/CHILA regime because of a strong belief in OCAP. Many, in fact, privately express serious reservations, despite their public stance.

Sony and others have addressed the issue of common reliance extensively in this docket and will avoid repeating that lengthy discussion here.²⁰ Fundamentally, Sony believes that the level playing field created when all competitors must rely on the same underlying technologies and systems in their devices does more than simply encourage the development of a competitive market for navigation devices. Common reliance is, in fact, essential to the development of that market, to such an extent that *the Commission cannot fulfill the statutory directives of Section 629 without including a common reliance obligation* as part of its overall regulatory scheme.

The fact that *not one* of the Cable Commenters even addresses common reliance in their initial comments betrays either an alarming misunderstanding of the needs of CE manufacturers and consumers, or a general lack of seriousness about the development of a market for competitive, interactive navigation devices. Where millions, even billions, of dollars are at stake, along with critical customer relations and brand identity, Sony and other CE manufacturers require a regulatory obligation on the cable industry to accept and maintain a reasonable level of common reliance, or whatever regulations the Commission adopts for two-way navigation devices will fail. The CEA Proposal requires common reliance and is therefore a superior solution.

D. The Commission Must Reject The NCTA Proposal Because The Commission Cannot Cede Its Statutory Mandate To The Cable Industry.

The core problem with the OCAP/CHILA regime contained in the NCTA Proposal and supported by the Cable Commenters is that it asks the Commission to take the unprecedented step of abdicating its statutory authority to regulate the market for retail, interactive cable-compatible devices to CableLabs, to a private entity under the control of the cable industry. By

²⁰ See, e.g., Sony Comments at 7; CEA Comments at 4-6 and 14.

contrast, the broadcasting industry has never sought such a level of absolute control over radio or television manufacturers, nor have Internet Service Providers sought such limits on PC manufacturers.

It is unclear what role, if any, the Commission would have in fulfilling the statutory directives of Section 629 if it implements the NCTA Proposal. As described in Section I.A. above, the OCAP/CHILA regime would grant CableLabs control over: (1) the “look and feel” of competitive navigation devices; (2) the software and firmware specifications; (3) the development of device test regimes; and (4) the availability and nature of content outputs.²¹

Moreover, although the NCTA Proposal would obligate cable operators to deploy OCAP by a date certain, it would impose no further obligation to maintain that deployment for any fixed period of time, and no obligation to use OCAP, much less the same version of OCAP available to competitive manufacturers, in their own devices. CE manufacturers and consumers would lose any useful right to appeal decisions that violate their interests. Cable operators would have permission to alter the functionality of devices owned by consumers for any reason, or for no reason at all. Manufacturers would face the true Hobson’s choice of either participating in a process where a competitor would serve as the legislator, judge, jury and prosecutor, or cede the market for cable compatible devices to others.

Sony submits that this is not the outcome envisioned by Congress when it enacted Section 629 nearly 12 years ago. A true effectuation of Congressional intent demands a much more substantial, even controlling, role for the Commission. Indeed, why would Congress bother to pass a law intended to open up a closed market for cable navigation devices, a market that is wholly-dominated by the cable industry, if Congress intended, ultimately, that the

²¹ See *supra* n.12.

Commission should abdicate control of this market to the cable industry. The OCAP/CHILA regime cannot, by itself, deliver a competitive market for consumers, and for that reason, and the others stated herein, the NCTA Proposal must fail.

II. THE COMMISSION SHOULD ADOPT THE CEA PROPOSAL BECAUSE IT IMPOSES THE SMALLEST BURDEN ON THE CABLE INDUSTRY WHILE PROVIDING CONSUMERS AND MANUFACTURERS WITH THE MINIMAL PROTECTIONS NEEDED TO CREATE A COMPETITIVE MARKET.

After dozens of meetings with the cable industry over the course of several years, the CEA staff and member representatives who designed the CEA Proposal did so with a deep and firm understanding of the business needs of the cable industry. Further these drafters believed that the cable industry would fight any approach that impinged too much on its business interests with all of the substantial political, legal and financial resources at its disposal. Accordingly, *the CEA Proposal was drafted with the concerted purpose and intent of imposing the least possible burden on cable providers, while also providing consumers and manufacturers with the minimal protections necessary for a truly competitive market to develop.* In this sense, the CEA Proposal represented (and still represents) a good faith effort by manufacturers to bridge the differences between the cable and CE industries and advance a reasonable solution.

The reaction that the CEA Proposal received from the cable industry, both in the initial comments of the Cable Commenters on the *Third FNPRM* and in previous filings at the Commission, was disappointing but, unfortunately, not shocking. To ensure that no misconceptions about the CEA Proposal persist, the following is a brief summary of its key elements:

1. OCAP may be deployed as is, subject only to the following limitations:
 - a. Deploy on all 550 MHZ or greater headends by January 1, 2009;
 - b. Run the same version of OCAP on Cable OCAP-based devices as on competitive OCAP devices;

- c. Use this identical version of OCAP on a “substantial percentage” of proprietary devices;
- d. Provide subscriber with access to all interactive cable services;
- e. Provides the cable operator’s electronic program guide; and
- f. Changes to OCAP require approval of a supermajority of device manufacturers that have deployed OCAP-enabled products.

II. DCR+ shall also be deployed, which will:

- a. Provide consumer access to traditional linear or scheduled content;
- b. Provide consumer access to switched digital video (“SDV”), pay-per-view (“PPV”) and video-on-demand (“VOD”) cable content, and no other interactive content, through amendments to the standards already incorporated into today’s multistream CableCARD (M-Card);²²
- c. Impose no additional hardware or software burdens on cable operators;
- d. Device manufacturers required to implement new hardware and firmware to enable bi-directional functionality; and
- e. OCAP implementation not required.

III. Outputs:

- a. Allow use of all outputs permitted under the DFAST and CHILA licenses, as well as those outputs approved by the Digital Living Network Alliance (“DLNA”); and
- b. Approve future proposed outputs based on, and only on, whether the output prevents harm to the cable network or the theft of cable services.

IV. Metadata:

- a. Must be made available at no additional charge to consumers who own competitive devices; and
- b. Imposes no obligation on cable providers to create or add metadata for the exclusive use of competitive devices.

V. Testing:

- a. Manufacturer’s initial DCR+ and OCAP-enabled devices will be tested against a jointly-developed and administered test suite; subsequent devices will be tested in house using the same test suite;

²² CEA’s initial proposal and its comments on the *Third FNPRM* identify the precise amendments to existing standards necessary to implement the DCR+ technologies. See *Initial CEA Proposal*, Attachment A; CEA Comments, Appendix C.

- b. OCAP applications will be released to device manufacturers no later than sixty days before release for compatibility testing with existing models; and
- c. OCAP-enabled headends will be self-certified by cable operators for compliance with a jointly developed test suite.

The only technological obligation on cable operators under the CEA Proposal would be to develop the limited extensions to standards included on today's M-Card that are necessary to allow consumers access to linear programming delivered via SDV, as well as PPV and VOD. The other obligations primarily involve ensuring compatibility and proper implementation.

Although it is too easy to distinguish all of the Cable Commenters' arguments against the CEA Proposal from reality, Sony believes that the following issues merit special consideration.

A. Contrary To The Claims Of The Cable Commenters, Consumers Will Not Be Confused By The Additional Choice Afforded By The CEA Proposal.

The Cable Commenters argue that allowing a market with two types of devices with different functionalities – an OCAP-enabled device with full interactive capability and a DCR+ device with basic interactive capability – will result in consumer confusion and frustration. NCTA, for example, claims that “so-called ‘digital cable-ready’ DCR+ televisions will *not* deliver cable services as consumers have bought them and expect to receive. . . . Such limitations would likely disappoint, confuse, and frustrate cable customers”²³ This argument makes three questionable assumptions: (1) that all consumers want access to all of cable's interactive services all of the time; (2) that consumers cannot identify and understand the different functionalities of different devices; and (3) that CE manufacturers have no interest in ensuring that consumers know precisely what they are getting (and not getting) when they purchase a product.

²³ NCTA Comments at 36-37.

In reality, none of these assumptions is correct. First, and as discussed in greater detail above, it is certainly possible, even likely, that some substantial proportion of consumers, if given a choice, would not pay the premium involved to gain access to the various advanced interactive services described by the Cable Commenters. Many analog-only and digital-basic-only cable customers exist today, and these customers understand and have chosen to pay for access to something less than the full scope of the cable services available to them. There is no reason to expect any change in consumer behavior in the context of interactive cable services. Indeed, the Cable Commenters either forget or ignore the fact that some people just want to watch TV.

The Cable Commenters' second assumption fails based on a simple trip to any big box retailer. There, in the television aisle, a consumer will see dozens, if not hundreds, of different televisions, all with different screen sizes, features, brands, user interfaces and prices. Some, indeed many, consumers may feel overwhelmed by the enormous variety of available choices. Nonetheless, many consumers are able to evaluate these choices and purchase the one of roughly three million TV sets sold every year that they believe best suits their needs. Imagine, on the other hand, the disappointment, confusion and frustration consumers would feel if all of those dozens of televisions looked and performed the same. In short, and in contrast to the argument of the Cable Commenters, consumers are not merely capable of evaluating and understanding complex choices when purchasing consumer electronics products, *they expect that these choices will be available.*

Finally, the Cable Commenters argument about consumer confusion assumes that CE manufacturers and retailers have no interest in ensuring that consumers fully understand the benefits and limitations of a product at the time of purchase. For two reasons, nothing could be

further from the truth. First, if a product falls short of a consumer's reasonable expectations, that consumer has a right, albeit limited in time, to return the product for a full refund, often with no questions asked. Manufacturers and retailers see no benefit from disappointed customers. The returned television cannot, by law, be resold as new – it must be resold, if it can be resold at all, at a reduced price as a “return” or “open box” item. This lost revenue provides an ample incentive for manufacturers and retailers to make sure that the customer leaves the store happy and stays that way. Second, and more importantly, Sony, like many of its competitors, designs its products with the goal of creating customers for life and establishing brand recognition. Indeed, “Sony” was recently identified as the number one “power brand” in the world in GfK Roper Consulting's prestigious and well-recognized annual worldwide study, and four other CE manufacturers made the top 15.²⁴ CE manufacturers would not jeopardize such valuable brand loyalty for a single, quick and dirty sale as the Cable Commenters seem to suggest. Each time a product fails to meet the needs of a consumer a manufacturer loses some amount of credibility in that consumer's mind. CE manufacturers, accordingly, have every interest in ensuring that consumers know what they are buying and that the product purchased continues to meet or exceed the consumer's expectations. To operate otherwise in a crowded, competitive market is simply bad business.

B. Contrary To The Assertions Of The Cable Commenters, The CEA Proposal Will Not Hinder The Ability Of The Cable Industry To Innovate.

The Cable Commenters also complain that the CEA Proposal, and in particular the DCR+ portion of that proposal, would limit their ability to deliver new and innovative cable services to

²⁴ “Global Brands Suffer Power Drain According to GfK Roper Consulting Annual Worldwide Study,” (August 17, 2007), available at: <http://www.gfkamerica.com/news/roperglobalbrandsstudy.htm>.

their customers. Time Warner, for example, argues that “[t]he CEA proposal would place a straightjacket on innovation.”²⁵

This argument might carry some logical weight if the CEA Proposal advocated the DCR+ approach as a replacement for, rather than a compliment to, the OCAP/CHILA regime. As indicated above, and as amply explained in the CEA Proposal itself, however, it does no such thing. To be clear, the CEA Proposal does not ask the Commission to prohibit cable operators from deploying OCAP. On the contrary, OCAP is as important to the CEA Proposal as DCR+.

In fact, a more logical argument might be that the availability of a competing approach would encourage, and not hinder, the development of new and innovative advanced interactive cable services. Cable operators would have a clear incentive to develop interactive services that entice consumers to “trade up” to a fully functional OCAP-enabled device, either retail or proprietary. Manufacturers of DCR+ devices, by the same token, would have every incentive to create new and innovative electronic program guides, and present video content delivered via SDV, PPV, or VOD in the best manner possible, to offset competition from OCAP.

Perhaps against interest, the CEA Proposal would create an environment for a long and difficult marketplace battle between OCAP and DCR+. Neither side’s advocates would be able to guarantee victory at the outset, but one thing is certain: consumers would choose the winner. Sony, and the other advocates of the CEA Proposal are perfectly comfortable operating in such an environment.

²⁵ Time Warner Comments at 30-34.

C. Cable Proves The Feasibility Of The DCR+ Proposal With Its Own Switched Digital Video Solution.

Perhaps the most striking characteristic of the NCTA's initial comments on the *Third FNPRM* is that, just before trying to discredit the DCR+ approach as dangerous and unworkable, it dedicates an entire section of its filing to a technology proposal that all but proves the feasibility of DCR+. NCTA describes this technology proposal as follows:

Under this approach -- arrived at through private discussions outside of regulatory compulsion²⁶ -- a small "Tuning Resolver" adapter could be made available to the UDCP consumer. With only firmware modifications to new UDCP products, and a USB 2.0 connection, properly equipped UDCPs could receive programming offered on [switched-digital video] channels.²⁷

Notwithstanding the obvious differences in functionality and form factor, the NCTA's "Tuning Resolver" is architecturally indistinguishable from the DCR+ M-Card proposed by CEA. Both include a network specific interface to receive communications from the cable headend. Both internally translate these network-specific communications into a standardized format that any properly equipped host-device can understand. Both deliver these translated communications to the host over a standard transmission path. In short, start with a Tuning Resolver, remove the USB output and replace it with a PCMCIA interface, add processing power, memory, the extensions to existing standards described by CEA in its initial comments on the *Third FNPRM*, add both M-CARD functionality and a CableCARD form factor, and suddenly one arrives at a device that looks and acts very much like the DCR+ interface device in the CEA Proposal.

²⁶ Sony questions whether the NCTA's "Tuning Resolver" approach would have appeared, absent the dedicated lobbying of certain CE manufacturers before the Commission and Congress on the dangers that SDV poses to the continued viability of retail plug-and-play devices.

²⁷ NCTA Comments at 33.

Sony does not suggest that the changes described above can be implemented without some effort by the CE and cable industries. Nor does Sony suggest that creating a DCR+ M-Card from a Tuning Resolver could happen overnight. It could not. The fact, however, that NCTA proposes a technology solution that, on close inspection acts very much like the DCR+ technology that they go to great lengths to criticize, argues strongly that technological impediments should not stop the development of this consumer-friendly alternative to the OCAP/CHILA regime.

D. The Commission Should Adopt The CEA Proposal Because It Allows Manufacturers The Flexibility Necessary To Offer Innovative Consumer Products.

In evaluating the approaches before it, the Commission should take note of three critical consumer benefits offered by the CEA Proposal and DCR+. First, DCR+ allows manufacturers substantially greater freedom to tailor the look and feel of a competitive interactive cable device to meet consumer demand. Second, DCR+ would allow CE manufacturers to desegregate video content delivered by cable from consumers' other sources of content. Third, DCR+ allows consumers substantially greater freedom to access and use video content than would otherwise be allowed under the OCAP/CHILA regime. Sony believes that these elements constitute important components of modern consumer electronics products and will assume even greater significance in the future.

The look and feel of a consumer electronics device, indeed the entire interface between user and product, present a certain subtle dilemma for manufacturers, in that consumers typically fail to notice when this functionality operates properly, but can become deeply frustrated when it does not. Consumers benefit when a device can arrange information on the screen in an efficient and accessible manner, and when a device responds promptly and accurately to user inputs (*e.g.*,

a key press on a remote control). Intense competition in the television market has driven Sony, like many other manufacturers, to search for new ways to differentiate its products from those of its competitors. Where price, screen size and picture quality drive most television purchase decisions today, technological advances will inevitably decrease the differences among future video devices. One way that Sony hopes to make its mark with future consumers is by facilitating access to an ever-growing variety of video content. Unfortunately, by demanding pixel-for-pixel control of the consumer's display and by defining a strict set of remote control "key codes," the OCAP/CHILA regime effectively forecloses this possibility. By contrast, the DCR+ approach does not demand such control, and would thereby permit CE manufacturers to compete to develop user interfaces that best facilitate consumers' access to all types of content, including video content delivered by cable.

Further, the OCAP/CHILA regime refuses to acknowledge a reality that is quite familiar to many consumers – the fact that cable is but one of many sources of video programming available today. Many consumers have libraries of video content on fixed media (*i.e.* DVDs), and now have access to an almost infinite selection of video through the Internet, both from content providers like NBC/Universal (to name one of many) and through aggregators like YouTube. The OCAP/CHILA regime, however, demands that these alternative sources remain segregated from cable, thus precluding the deployment of features like cross-platform searching, which would allow a consumer to identify various sources of content based on, for example, a particular genre, actor or title. It also prevents consumers from lawfully aggregating content from other sources with cable content on a single digital video recorder, thereby forcing a consumer to search, at best, two different locations to determine where, for example, a recent episode of *The Office* was recorded. Though this segregation might serve the business interests

of cable operators, it is difficult to see how it benefits consumers, particularly given the abundance and popularity of alternative content sources.

Finally, as discussed in greater detail in Section III below, the OCAP/CHILA regime imposes consumer-unfriendly and in many cases unnecessary limitations that prevent the otherwise lawful use of content by consumers. As a sister company to both a movie studio and a record company, Sony respects the need for stringent protections against copyright abuse, and indeed repeatedly noted the need for “effective and robust” content protection in its initial comments.²⁸ On the other hand, giving consumers the ability to pause a movie in the living room and restart it after delivery through a home network in the bedroom would seem to create few burdens, if any, on the lawful rights of content providers or cable operators. Similarly, allowing a busy mother to quickly burn a single copy of a children’s show onto a DVD, so that her child can watch it in the car on the way to preschool, just makes good consumer sense, again without harming the clearly legitimate interests of the cable or content industries. Of course, such functionality may or may not be available for video content delivered on cable under the OCAP/CHILA regime. The decision on whether to enable these features would rest solely in the hands of the cable provider, who might allow it or not depending on its parochial business interests. For all of these reasons, the CEA Proposal is a far superior solution for consumers and the competitive marketplace.

E. The Commission Should Adopt The CEA Proposal Because, Contrary To The Allegations Of The Cable Commenters, The Proposed Changes To Existing Standards To Implement DCR+ Are Not Unduly Burdensome.

Finally, the Cable Commenters object long and loud to the supposed burdens that implementing the DCR+ approach would allegedly place on them. Comcast, for example, claims

²⁸ Sony Comments at 7, 8, and 21.

that “[t]he CEA Proposal would impose staggering – and unprecedented – requirements on cable operators. It would force the cable industry to redesign – at its own expense – every element of the cable plant, from headends and set-top boxes, to electronic program guide[s] and video-on-demand services, to CableCARD and downloadable security.”²⁹ Comcast then goes on to excoriate CEA for having the audacity to propose using the ANSI-accredited standards process to effectuate the changes necessary to implement the DCR+ approach.

As a current participant in hundreds of standards-setting activities in scores of standards-setting bodies in both the United States and throughout the world, Sony is well aware of the benefits and drawbacks of this process. CEA is also familiar with the standards world, in that it operates an ANSI-accredited standards body of its own. The question is not whether development of the standards necessary to implement DCR+ would impose a burden, however small, on cable operators; it would, just as it would impose a burden on CE manufacturers. The question is whether this burden, when identified with precision, outweighs or is outweighed by the attendant benefits that DCR+ would bring to consumers.

Sony believes that based on all available evidence, the burden of adding the limited extensions to existing standards, as described in great detail by CEA in its initial comments on the *Third FNPRM*,³⁰ would be small. First, as indicated in its comments, CEA does not propose to implement DCR+ through the creation of entirely new standards from scratch. Rather, it asks for the development of extensions to existing standards, namely ANSI/SCTE 28, ANSI/SCTE 40, and ANSI/SCTE 65. Sony does not wish to mislead the Commission by claiming that these efforts would be *de minimis* or incidental. On the other hand, Sony is skeptical of claims that

²⁹ Comcast Comments at 14.

³⁰ See *Initial CEA Proposal*, Attachment A; CEA Comments, Appendix C.

this simple request would test the viability of multi-billion dollar corporations. Moreover, the Commission should note all of the standards cited by CEA have been developed by SCTE, the Society of *Cable* Telecommunications Engineers. This body, as the name indicates, consists largely of technical experts employed by or affiliated with the cable industry. Although this fact does not guarantee streamlined treatment of the changes proposed in the DCR+ approach, it does suggest that the process could move as quickly, or as slowly, as the cable industry allows. Moreover, the parties that developed the technical proposals in the DCR+ approach are hardly amateurs. On the contrary, CEA sought the assistance of these individuals specifically because of their depth and breadth of experience with cable operations, systems, applications, and security. They were directed to develop an approach that imposed the least burden possible on cable operators, and were not permitted to propose any changes that would impact proprietary network systems beyond the point of demarcation in the CableCARD. Not surprisingly, like good engineers, they managed to do so. What should be clear to the Commission is that CEA chose to ask in its proposal for nothing less, but nothing more, than its membership would need to gain reasonable access to the market for interactive cable devices. Because of the ample evidence that the DCR+ approach will impose minimal burdens on the cable industry and will offer substantial, tangible benefits for consumers, Sony continues to support the CEA Proposal and DCR+. Indeed, with little effort, CEA could have developed a proposal so burdensome that it would justify the outrage of the cable industry.³¹ The DCR+ approach, however, is not such a plan.

Lastly, as set forth in detail here and in Sony's initial comments on the *Third FNPRM*, and in the comments of other interested parties, Sony believes there is ample evidence to

³¹ *Id.*

demonstrate that the DCR+ approach as set forth in the CEA proposal, would offer substantial tangible benefits to consumers. It is for this reason that Sony maintains its support.

III. CONTENT PROTECTION REMAINS A PRIORITY FOR SONY AND OTHER CE COMPANIES, BUT THE COMMISSION MUST STRIKE A DELICATE BALANCE BETWEEN THE INTERESTS OF CONTENT PROVIDERS AND CONSUMERS.

With respect to the content protection issues raised in the comments, Sony believes the Commission should proceed cautiously and should: (1) prohibit selectable output controls unless the need for such controls in limited circumstances is proven through a waiver; (2) require that new content output technologies are approved through a fair and open process in which all interested parties are represented and have a voice; (3) maintain the current encoding rules which strike the correct balance for consumers, content providers and MVPDs; and (4) refrain from mandating a new usage rights signaling regime at this time.

A. Consumers Will Be Harmed If The Commission Allows Unlimited Selectable Output Controls.

Selectable Output Controls (“SOC”) should be used, if ever, only when it can be clearly demonstrated that the inevitable consumer confusion and potential consumer disenfranchisement from SOC will be outweighed by the benefits of bringing new content or services to the same consumers.

Selectable Output Control, as defined by the proponents of SOC,³² would allow a content provider and/or MVPD to, at their complete discretion, turn off otherwise approved and lawful outputs on consumer devices on a *ad hoc* basis with no rules to guide the usage of SOC and no notice to consumers as to if, when, and how SOC might be affected on their products. The potential randomness of SOC alone makes it a tool that could cause significant consumer

³² See, e.g. NCTA Comments at 18-19, Comments of the Motion Picture Association of America, Inc., CS Docket No. 97-80 PP Docket No. 00-67 (filed on August 24 2007) at 8-10 (“MPAA Comments”).

confusion. This is particularly true when, as suggested by the MPAA, SOC could be used on “all content that passes through bidirectional devices,”³³ including programming that a consumer is accustomed to receiving and viewing through such a device.

As the Commission has noted in addressing SOC, “[w]e...recognize consumers’ expectations that their digital televisions and other equipment will work to their full capabilities, and the potential harm to the DTV transition if those expectations are frustrated.”³⁴ Not only will the DTV transition be frustrated if the Commission adopts SOC wholesale, but as a practical matter, consumers will be understandably exasperated if one day they can legitimately watch a particular program, and the next day, when SOC is invoked, they cannot. Given the impending DTV transition and the Commission’s acute attention to this matter, the Commission’s logic as put forth in 2003 still holds true today: “A prohibition [on SOC] is...necessary to ensure the DTV transition is able to proceed in an expeditious manner and without concerns over connectivity and functionality forestalling digital equipment acquisition.”³⁵

However, as suggested above, if a case can be made that a “new business model” will not be offered to consumers *but for* SOC – that is, if consumers will be denied the benefits of receiving content that they would assuredly not otherwise be able to enjoy – proponents of SOC should apply for waivers of the SOC prohibition in order to effectuate such a new business model on a case-by-case basis.³⁶ Selectable output controls if used in this limited circumstance

³³ *Id.* at 9.

³⁴ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885, ¶ 60 (2003) (“*Plug and Play Order*”).

³⁵ *Id.* at ¶ 61.

³⁶ *See id.* (noting that SOC “could potentially be advantages to consumers, such as facilitating new business models” and recognizing such waivers, petitions, or proposals).

could benefit all interested parties, including consumers. But even in such a limited scenario, SOC should: (1) never be used on an *ad hoc*/program-by-program basis; (2) should always include sufficient *ex ante* consumer notice; (3) should never selectively shut off otherwise approved and protected digital outputs; and (4) should never be used to selectively shut off an output for any other reason other than for security.

B. The Commission Must Require That New Content Protection And Output Technologies Are Approved By A Body With Equitable Representation For All Interested Parties, Including Consumers.

Sony wants the same thing from the approval process for new content protection technologies and outputs as does the MPAA: a fair and open process in which we and our industry have an equitable say in the fundamental technologies that affect our business interests.³⁷ We, like the MPAA, acknowledge that to the extent content owners and cable operators do not have an equitable vote within DNLA, it is not an appropriate venue for making content protection decisions.³⁸ But unlike the MPAA, Sony does not advocate for a forum in which it has significant power and all others have no meaningful voice.³⁹

Indeed, Sony seeks nothing more than what the MPAA asks for in its comments and noting more than what the cable operators obtained as part of the *quid pro quo* for the approval

³⁷ See MPAA Comments at 19.

³⁸ See Sony Comments, at 23, n. 60 (“[I]t is not clear whether DLNA in fact allows for open, fair and meaningful participation by all parties with interests in the approval of outputs and content protection technologies. To the extent DLNA does not permit such meaningful participation, Sony does not support appointing granting DLNA this power.”); see also, MPAA Comments at 19.

³⁹ See MPAA Comments at 19-20, noting that the CableLabs approval process presents a fair and workable approach for the approval of content protection technologies and outputs; see also CHILA § 4.2 (“[I]f Licensee disagrees with a decision to either issue [a change to the OCAP spec] or to dismiss [a change to the OCAP specification], Licensee shall have the opportunity to *discuss the matter with a senior member of CableLabs management*, and CableLabs shall *give due consideration* to Licensee’s concerns with regard to the proposed [change].” The CHILA license affords licensees no additional recourse over change management.

of DTCP-IP: change management rights.⁴⁰ That is, all interested parties, including consumer groups, should have a reasonable but consequential voice in the process for the approval of new content protection technologies. If an interested party, despite its initial input, disagrees with the ultimate decision, that party should have the right to appeal to a neutral third party invested with the power to resolve its concerns.⁴¹ Simply put, “fair and workable” is a process and forum that is fair and workable for all interested parties, not just for those with a vested interest in maintaining the status quo.⁴²

C. The Commission Should Retain Its Existing Encoding Rules Which Strike The Correct Balance Between Protecting The Reasonable Expectations Of Consumers And The Right Of Content Providers And MVPDs To Innovate.

Encoding rules provide consumers and device manufacturers with a reasonable expectation of what can and cannot legitimately be done with controlled content.⁴³ Thus, as noted by the Commission, encoding rules advance the Congressional interest of “ensur[ing] that cable subscribers will be able to enjoy the full benefits of available cable programming and the functionality of their televisions and video cassette recorders.”⁴⁴ Given the proliferation of

⁴⁰ *See id.* at 20-21, despite acknowledging that content owners have a “substantive role in the approval process” at CableLabs, also requesting that “content providers ... should also continue to have the right to appeal an initial decision by CableLabs to the Commission.” *See also*, Letter from Seth D. Greenstein, counsel for Digital Transmission Licensing Administrator LLC, and Paul Glist, counsel for Cable Television Laboratories, Inc. to Marlene H. Dortch, Secretary, FCC (filed on August 22, 2007) (noting that as a condition for the approval of DTCP-IP, DTLA will grant cable operators change management rights).

⁴¹ *See* Sony Comments at 23-24.

⁴² *See* MPAA Comments at 19-20; *see also* NCTA Comments at 54-57.

⁴³ In addition to the Commission's adoption of encoding rules in this context, Congress also codified the use of similar encoding rules as part of the Digital Millennium Copyright Act, 17 U.S.C. 1201(k).

⁴⁴ *Plug and Play Order* at ¶ 56.

digital video recorders (“DVRs”)⁴⁵ and the growing adoption of home networks, the importance of encoding rules has increased significantly since the Second Order was issued in 2003. Indeed, today consumers watch a substantial portion of their television via the time-shifted content recorded on their DVR.⁴⁶ It would make little sense for the Commission to potentially reduce the efficacy of digital products by eliminating the existing encoding rules when digital home networking is a significant area for current and future innovation in the CE/IT industry,⁴⁷ and when the digital TV transition is just around the corner.

Moreover, in contrast to the assertion of the MPAA, the existing encoding rules provide a clear and largely uninhibited path for content providers and MVPDs to innovate and create new market-based business models.⁴⁸ If a content owner or MVPD develops a new business model, the existing rules allow for such “undefined business models” to be encoded in any manner that the content distributor uses.⁴⁹ In addition, even if a content provider wants to innovate within a “defined business model,” the rules allow a content provider to petition the Commission for the ability to encode the new service in a manner that differs from the encoding rule that would otherwise apply to that business model.⁵⁰ Finally, if a content distributor wishes to simply try

⁴⁵ See e.g., <http://arstechnica.com/news.ars/post/20070601-nielsen-ratings-drop-nonexistent-when-dvrs-are-accounted-for.html>, (June 1, 2007), noting that 17 percent of US households have a DVR and in such households nearly have of the television watched is from recorded DVR content rather than at the time of broadcast.

⁴⁶ See *id.*

⁴⁷ See e.g., Comments of the Home Networking Proponents, CS Docket No. 97-80, PP Docket No. 00-67 (filed on August 24, 2007) at 8.

⁴⁸ See MPAA Comments at 5-6.

⁴⁹ 47 C.F.R § 76.1906. Note that the rules do allow for a complaint to be filed at the Commission if this “undefined business model” exemption is invoked, but only after the new service has been launched in the marketplace. *Id.*

⁵⁰ *Id.* at § 76.1905.

out a new business model in the marketplace, the rules exempt legitimate “bona fide trials” from the encoding rules altogether.⁵¹

D. The Commission Should Not Mandate A New Usage Rights Signaling Regime At This Time.

The Commission should move cautiously before adopting any rule that would “require” a bi-directional device to recognize and respond to a new “usage rights signaling” regime.⁵²

Although Sony believes that, in general, content owners should have the right to reasonably monetize the distribution and recording of their content and to create new business models via various usage models, mandates of such a nature should only be imposed after thoughtful and deliberate study and after a market failure has been clearly identified, and only to the extent that doing so does not otherwise run afoul of established encoding rules. Sony commits to working with content owners on this important issue, but requests the Commission forego ruling on the matter at this time.

IV. CONCLUSION.

As noted by Sony in its initial comments to this rulemaking, we applaud the Chairman and the Commission for their focus on “open access” and their efforts to enhance competition and consumer choice with respect to all communications devices and services. The benefits endemic to open access, such as price competition, choice, and innovation, will never be realized by the consumers of video services, however, if the Commission abdicates its regulatory responsibility over “plug-and-play” to cable operators and CableLabs as the Cable Commenters request. In addition, the Commission must ensure the possibility of consumer choice by not codifying in regulation the OCAP/CHILA regime which would, by definition, deprive device

⁵¹ *Id.* at § 76.1907.

⁵² MPAA Comments at 14-15.

manufacturers of the ability and incentive to differentiate their products and to respond to the needs and wishes of consumers. And finally, the Commission must develop a fair and open process for the approval of content protection technologies and the rules that govern the use of such technologies to guarantee that consumers have the reasonable opportunity to enjoy their lawfully obtained content when and where they want.

The above, coupled with the fundamental principles outlined by Sony in its initial filing, provide the Commission with sufficient guidance to finally effectuate Congress's intent to create a retail navigation device market as articulated in Section 629 nearly 12 years ago.

Respectfully Submitted,

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I, Peter Andros, certify on this 10th day of September, 2007, a copy of the foregoing Reply Comments of Sony Electronics Inc. has been served via electronic mail or first class mail, postage pre-paid, to the following:

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