

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
Evolution Broadband, LLC's)	CSR-7902-Z
Request for Waiver of)	
47 C.F.R. § 76.1204(a)(1) of)	
the Commission's Rules)	
)	
Implementation of Section 304 of the)	CS Dkt. No. 97-80
Telecommunications Act of 1996)	
Commercial Availability of Navigation Devices)	

**OPPOSITION OF
THE WALT DISNEY COMPANY**

The Walt Disney Company ("Disney") hereby submits this opposition to the Petition for Reconsideration filed by Public Knowledge *et al.* ("Petitioners") in the above-captioned proceeding.¹ For the reasons stated below, the Commission should deny the Petition.

Contrary to Petitioners' claims,² there continue to be substantial public interest benefits associated with waivers for low-cost, limited-capability set-top boxes. These devices provide a public benefit by affording a means for all subscribers to cable services to enjoy the improved resolution and greater variety of digital programming networks being made available today by

¹ See Petition for Reconsideration of Public Knowledge, Free Press, Media Access Project, New America Foundation, Open Technology Institute, and U.S. PIRG, CSR-7902-Z, CS Dkt. No. 97-80 (filed June 29, 2009) ("Petition").

² *Id.* at 11.

programmers like Disney. Reversing the Commission's order would, paradoxically, work to deprive consumers of access to digital services by precluding multichannel video programming distributors ("MVPDs") from providing one of the simplest and least costly ways to participate in the digital transition.

Furthermore, Petitioners err in suggesting that there is no need to utilize encryption with these low-cost, limited-capability devices.³ As distribution of MVPD programming increasingly shifts to digital (both standard-definition ("SD") and high-definition ("HD")), it is critical to content providers that protections are in place to prevent unauthorized reception, reproduction, and redistribution of their content. In an increasingly digital world, utilizing content encryption methodologies is the only acceptable solution for adequate protection for this content.⁴ This issue is of the utmost importance to Disney and all major content providers,⁵ and it is typically a contractual requirement of all MVPDs that they utilize encryption-based security methods when distributing any digital content from Disney.

Low cost, limited-capability devices provide significant public interest benefits to consumers, cable operators, and programmers. However, it is critical for the successful deployment of these devices that cable operators are able to also meet their contractual obligations with content providers and implement satisfactory security measures on these

³ See Petition at 4-5.

⁴ Encryption is widely recognized in the MVPD industry as the most proven way to protect digital content from piracy, and is used by cable operators to secure the distribution of premium networks and other content. The navigation device statute and the Commission's implementing rules and orders expressly recognize cable operators' need to prevent theft of service. See 47 U.S.C. § 549(b); see also 47 C.F.R. §§ 76.1201, 76.1203, 76.1204(d) & 76.1209; *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd. 14775, ¶¶ 40-43 (1998).

⁵ Content piracy is a paramount concern for Disney and other programmers, costing the content community lost revenue every year.

devices. Waiver of the integration ban for these devices will allow operators to activate the security capabilities in these devices. Preventing unauthorized reception, reproduction, and redistribution of content through use of these security methods is ultimately in the best interests of consumers, content providers, and MVPDs, and is an essential element of a healthy MVPD marketplace.

These devices also play a role in transitioning analog cable customers to digital and enabling the rollout of more HD and other programming. The Commission has underscored these public interest benefits in its prior orders,⁶ and the *Evolution Broadband Order* is fully consistent with these prior determinations.⁷

Disney and other programmers have invested substantial resources in developing HD networks to help meet the growing customer demand for more HD programming, particularly as the number of consumers with HDTVs continues to increase.⁸ Disney currently distributes approximately 10 HD networks. These HD networks can be distributed broadly to MVPD

⁶ See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd. 6794, ¶ 37 (2005); *In the Matter of Comcast Corporation Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 22 FCC Rcd. 17113 ¶ 14 (2007); *In the Matter of Cable One, Inc.'s Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, FCC 09-45, ¶ 13 (rel. May 28, 2009) (“*Cable One Waiver Order*”).

⁷ See *In the Matter of Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, FCC 09-46, ¶ 12 (rel. June 1, 2009) (“*Evolution Broadband Order*”). Moreover, waivers for these devices will have no effect on the retail marketplace for navigation devices. See *Cable One Waiver Order* ¶¶ 13-14 (“[I]t is generally understood that the retail market has demonstrated that consumers do not have significant interest in one-way devices” and that “consumers are more interested in advanced two-way functions that [one-way devices] by definition cannot perform.”).

⁸ *Across America, HDTV Rapidly Becoming the Standard*, Nielsen Wire, May 21, 2009 (“As of February 2009, slightly more than one-third of American households had at least one HDTV, a marked increase from November 2008, when 29.2 percent of homes had one, and a huge leap from February 2008 when only 19.3 percent of homes had one....”), at <http://blog.nielsen.com/nielsenwire/consumer/across-america-hd-tv-rapidly-becoming-the-standard/>.

customers if MVPDs have adequate bandwidth in their networks to accommodate these HD networks.

Consumers reap substantial benefit with the development of robust competition among MVPDs, and the amount of HD content offered by various distributors has become a key competitive factor. Most cable operators today dedicate a significant portion of their bandwidth to analog channels. To meet competitive demands, cable operators are digitizing analog channels and repurposing the analog bandwidth for more HD programming and other services consumers demand. As a result of this bandwidth reclamation, cable operators will be able to offer many more HD channels and thereby compete more effectively with the HD offerings of their DBS and telco competitors.

Low-cost, limited-capability devices provide a cost-effective way to achieve these digitization objectives. These devices cost less than \$50 per unit, and enable customers to access digitized SD channels on their analog TVs. Grant of waivers for these devices will enable the rapid digitization of cable networks. If, however, cable operators are prevented from deploying low-cost, limited-capability devices, their efforts to reclaim analog bandwidth will be slowed and the ability of programmers to distribute more HD programming to cable customers will be impaired. Petitioners do not explain how obstructing cable's transition to digital in this way -- which would be the result of having their Petition approved -- will serve the public interest.⁹

⁹ Such a decision would be contrary to the Commission's prior decisions relating to waivers for low-cost devices, as well as its recent determination in the *SDV Order* that reclamation of cable bandwidth for more HD programming and other services benefits consumers. *In the Matter of Oceanic Time Warner Cable et al.*, Order on Review, FCC 09-52, ¶ 13 (rel. June 26, 2009) ("*SDV Order*") (noting that bandwidth reclamation would enable "the launch of new HD channels and the introduction of diverse and niche programming options, including foreign-language content and other diverse programming" and "facilitate the deployment of advanced broadband technologies such as DOCSIS 3.0, as well as expand broadband capabilities").

For the foregoing reasons, the Commission should deny the Petition.

Respectfully submitted,

/s/ Susan Fox

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CERTIFICATE OF SERVICE

I, Susan L. Fox, hereby certify that, on July 9, 2009, copies of the attached Opposition to the Petition for Reconsideration filed by Public Knowledge *et al.* was served via first class mail, on the following:

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