

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
International Comparison and)	GN Docket No. 09-47
Consumer Survey Requirements in the)	
Broadband Data Improvement Act)	
)	
A National Broadband Plan for Our)	GN Docket No. 09-51
Future)	
)	
Inquiry Concerning the Deployment of)	GN Docket No. 09-137
Advanced Telecommunications)	
Capability to All Americans in a)	
Reasonable and Timely Fashion)	
)	
Implementation of the)	CS Docket No. 97-80
Telecommunications Act of 1996,)	
Commercial Availability of Navigation)	
Devices)	

COMMENTS – NBP PUBLIC NOTICE # 27



Matthew M. Polka
President and Chief Executive Officer
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Jeremy M. Kissel
Scott C. Friedman
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

Attorneys for the American Cable
Association

December 21, 2009

I. Introduction and Summary.

The American Cable Association (“ACA”) files these comments in response to the Commission’s National Broadband Plan Public Notice seeking comment on video device competition and innovation.¹

Neither small and medium-sized cable operators nor their customers have realized any meaningful benefit from the Commission’s ban on integrated set top boxes.² Therefore, in these Comments, ACA addresses the following:

- The problems facing small and medium-sized cable operators in the marketplace under the current set-top box rules and regulations; and
- The solutions that the Commission can implement that would encourage the development of competition and innovation in the market without causing undue harm to smaller video distributors and their customers.

American Cable Association. ACA represents nearly 900 independent cable companies that serve more than 7 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states and in nearly every congressional district. The companies range from family-run cable businesses serving a single town to multiple-system operators that focus on serving smaller markets. More than half of ACA’s members serve fewer than 2,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

¹ *Comment Sought on Video Device Innovation, NBP Public Notice # 27*, Pleading Cycle Established, GN Docket Nos. 09-47, 09-51, 09-137; CS Docket No. 97-80 (rel Dec. 3, 2009) (“*Video Device Public Notice*”).

² *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, ¶ 27 (2005).

II. The Commission’s integration ban has dramatically increased the cost of set top boxes, harming smaller cable operators and their customers.

The Commission rules prohibiting MVPDs from placing into service new navigation devices that “perform both conditional access and other functions in a single integrated device,”³ have not created a competitive marketplace for navigation devices. Instead, these rules have significantly increased the cost of set top boxes for small and medium-sized cable operators compared to the cost of devices with similar functionality just prior to the ban. As a result, many smaller operators with limited financial resources have scaled back their purchase of set top boxes, causing harm to consumers.

Without the means to purchase and deploy high-functionality set top boxes that can satisfy customer demand, smaller cable operators cannot fully offer their customers access to advanced services, such as digital-only and HD programming, on-screen channel guides, on-demand programming, and DVR-functionality. Instead, these operators ration the integrated high-functionality boxes already in stock by not offering these boxes to existing customers, and only offer a single box to new customers as a means to stay competitive in the marketplace against the DBS providers who are not bridled by the same obligations to deploy CableCARD-ready devices.

The regulations have also generally delayed smaller cable operators plans to free up channel capacity on their systems through the migration of analog channels to digital. Consequently, these video distributors in smaller markets

³ 47 C.F.R. § 76.1204(a)(1).

and rural areas have postponed their launch of additional digital programming and services, as well as the deployment of broadband.

At the same time, the emergence of a retail marketplace for reasonable priced digital set top boxes failed to materialize due to the lack of interest among major consumer electronic manufacturers to produce CableCARD-complaint devices. Therefore, customers of smaller cable operators are unable to get high-functionality boxes from their cable operators and unable to get affordable boxes in the retail market.

Only recently has the Commission recognized the deficiency in the marketplace for low-cost, limited-capability set top boxes, and began granting device specific – as opposed to operator specific – waivers.⁴ While these waivers may allow smaller operators to purchase and deploy basic boxes to their customers for their second or third televisions in their homes, the cost of high-functionality boxes remains prohibitive for many smaller operators.

III. The Motorola and Cisco/Scientific Atlanta duopoly stifles competition and innovation in the market for navigation devices.

The Motorola and Cisco/Scientific Atlanta set top box duopoly presents a significant barrier to the development of a competitive marketplace for set top boxes. This barrier is acutely felt by small cable operators who cannot use other manufacturers' navigation devices on Motorola and Cisco/Scientific Atlanta's proprietary conditional access systems.

⁴ 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, 24 FCC Rcd. 7890 (2009); *In the Matter of Motorola, Inc., Cisco Systems, Inc., Pace Americas, Inc., Thomson Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order 24 FCC Rcd. 10939 (2009).

Motorola and Cisco/Scientific Atlanta maintain their dominance in the set top box marketplace due in part to their proprietary conditional access systems. In short, Motorola and Cisco/Scientific Atlanta put up technical and financial barriers for small operators that ensure that they only deploy set top boxes on their systems that are compatible with the proprietary conditional access system used at their headend. In most cases, a cable operator's headend uses either Motorola or Cisco/Scientific Atlanta's proprietary conditional access system. Put another way, once a cable operator makes an initial decision to deploy either Motorola or Cisco/Scientific Atlanta's proprietary conditional access on their cable system, that operator is severely limited in the features, suppliers, and prices that it pays for set top boxes. Therefore, to the extent that a manufacturer may sell a lower-priced set-top box, a smaller cable operator is limited in their ability purchase that device and deploy it to their customers.

IV. Any changes to the Commission's integration ban must permit small cable operators to acquire low-cost integrated set top boxes.

For ACA's members, low-cost integrated set top boxes are the key to serving their customers and remaining competitive in the market. Therefore, in establishing new rules to ensure competition and innovation in the set top box marketplace, the Commission should take the following two steps:

- Provide small and medium-sized cable operators with immediate relief from the existing set top box rules and ensure that any new rules provide flexibility for smaller distributors; and
- Ensure that smaller operators are not unduly prevented from using set top boxes from the manufacturer of their choice on their Motorola or Cisco/Scientific Atlanta's system.

First, ACA urges the Commission to ensure that all existing waivers remain in effect and to consider additional waivers from smaller operators while the Commission considers enacting new rules. By doing so, small and medium-sized cable operators can provide their customers with affordable set top boxes and the advanced services that these boxes can offer. This also allows smaller operators to speed up plans to transition analog channels to digital, reclaiming bandwidth with which the smaller operator can offer additional advanced services. The availability of these advanced services – additional programming services and higher speed Internet – are an essential pre-requisite to the Commission’s goals of encouraging innovation in the navigation marketplace. Finally, to the extent that the Commission crafts new regulations, the Commission must recognize that small cable operators, who often have limited resources, need additional flexibility to acquire low-cost compliant boxes.

Second, to ensure that smaller cable operators can take advantage of any competition that may emerge in the wholesale set top box marketplace, the Commission must ensure that Motorola and Cisco/Scientific Atlanta do not unduly prevent smaller operators from using set top boxes from manufacturers of their choice on these systems. For example, Motorola and Cisco/Scientific Atlanta can ensure that multiple set top boxes can work within their systems by adopting a non-proprietary system known as SimulCrypt.⁵ SimulCrypt allows different conditional access systems to co-exist on one cable system by

⁵ See, e.g., Letter from Robert Gessner, President, Massillon Cable TV, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80 (Aug. 21, 2009).

permitting multiple encryption keys (for each conditional access system) to function on a single digital stream that only needs to be encrypted once.⁶ As a result, SimulCrypt can deliver the digital video signal to multiple set top boxes using different conditional access systems. Consequently, cable operators can purchase, deploy, and utilize set top boxes from multiple set top box suppliers or manufacturers within a single cable system – without wasting valuable bandwidth by simulcasting the same video stream for each conditional access system.

Unfortunately, neither Motorola nor Cisco/Scientific Atlanta support SimulCrypt in North America. This is not the case in Europe and other international markets, where Motorola and Cisco/Scientific-Atlanta both integrate SimulCrypt into their headend products. Not coincidentally, competition thrives in these markets.

By addressing the above two issues, the National Broadband Plan will make positive strides toward ensuring a competitive marketplace for set top boxes without unduly harming small and medium-sized cable operators and their customers.

V. Conclusion

The Commission's integration ban is not working as intended. With the National Broadband Plan, the Commission can take measures that will fix the problems in the current marketplace under existing rules and regulations, and take steps that will promote competition and innovation. The Commission should therefore adopt ACA's recommendations.

⁶ *Id.* at 3.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION



By: _____

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Jeremy M. Kissel
Scott C. Friedman
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

Attorneys for the American Cable
Association

December 21, 2009