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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: NBP Public Notice #27; GN Docket Nos. 09-47, 09-51, 09-137; CS Docket No. 97-80

Dear Ms. Dortch:

On February 16, 2010, SageTV submitted a letter responding to the Reply Comments filed by NCTA in this proceeding. We welcome Sage's interest in implementing innovative retail and home networking solutions and bringing more Internet video experiences to consumers on a wider variety of devices. However, SageTV's letter also includes a number of inaccuracies and we take this opportunity to respond.

It is important to note that we agree with SageTV that any approaches to the retail availability of video devices need to encompass all multichannel video programming distributors (MVPDs) if this market is to succeed.

We also agree with SageTV (and have said repeatedly) that a "gateway" is one potential solution for spurring a retail navigation device market and the cable industry is working across industry lines to make such solutions a reality. We also agree with SageTV that such a gateway need not be subject to strict definition by ANSI standards. But the term "gateway" means very different things to different people and those differences are critical. In that regard, SageTV oversimplifies what would be required to deploy a workable gateway solution.

In our filings we pointed out that the current gateway proposals (some being less than one page long) leave out significant detail to make a "gateway" truly functional as an MVPD device that provides all of the MVPD's services in a manner that the consumer expects. For example, providing EAS messages, closed captioning, Quality of Service, parental controls and content protection, is not, as SageTV assumes, as simple as outputting MPEG video.

In this regard, the robust parental controls provided by most cable operators run as an application in the set top-box and differ from the V-chip signals embedded in the MPEG stream. Even when signals can be output, such as EAS signaling, V-chip signals, or an added field in HTML code, the receiving device needs to read and respect the signals if they are to be usable to the consumer. However, currently, no testing, licensing, or other mechanism is in place to instruct the networked device to receive and present the EAS alert or V-chip information. The cable industry has worked closely and collaboratively with consumer electronics manufacturers, the IT community, content providers, satellite and telephone companies in the DLNA, SCTE, CEA and other forums to solve these issues, but work still needs to be done in this area.[1]

SageTV's proposed gateway also contains significant shortcomings that would limit the utility and appeal of its solution to consumers. For example, its proposed gateway cannot run the cable operator's program guide or VOD or any interactive applications, nor can it provide a set level of quality of service. These shortcomings would present significant problems in delivering cable service to the consumers who pay for it. We have similar concerns with SageTV's proposal to eliminate all testing and certification requirements for retail devices. Consumers must be assured that the devices they purchase at retail will function with their MVPD's video services as intended by the MVPD and expected by the MVPD customer. To that end, "set-top" functionalities built into retail devices to access MVPD networks should be subject to reasonable testing and certification. These processes need not be unduly burdensome or limited to implementation by CableLabs,[2] but can also be provided by trustworthy third-parties or via reasonable self-certification arrangements.

Security and content protection are another area of concern raised by the SageTV proposal. SageTV offers its commitment not to (knowingly) promote theft of content, but it objects to content protection like DTCP, a home networking technology approved by DLNA, the cable industry, and many others. SageTV argues that such protection has no place in the rules for navigation devices and that content once received at the gateway should be stripped of content protection rules like "copy never" or "copy once" and delivered "in unencrypted compressed bit stream." But, contrary to SageTV's assumptions, the Commission has specifically approved such protections and acknowledged them in its rules.[3] So, for example, content released in an early "on demand" window may be protected against copying, while older content that has been syndicated to broadcasters may be copied freely. Content providers require

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[1] DLNA has announced the Commercial Video Profile Phase I for recorded content and continues to work on CVP Phase II for live content. SageTV might consider joining DLNA to provide its input and solutions.

[2] It is important to note that, under the tru2way MOU entered into by the largest cable operators and major consumer electronics manufacturers, CableLabs modified its processes to allow for self-certification, weekly testing, and other streamlined arrangements for tru2way devices.

[3] *See Commercial Availability of Navigation Devices*, Further Notice of Proposed Rulemaking and Declaratory Ruling, 15 FCC Rcd. 18199 (2000); *Commercial Availability of Navigation Devices*, Second Report & Order, 18 FCC Rcd. 20885 (2003); 47 C.F.R. §§ 76.1901-1909. In a recent *ex parte* filing, DTLA highlighted many of SageTV's misunderstandings about content protection and the encoding rules. *See* Letter of Digital Transmission Licensing Administrator LLC to Marlene Dortch, NBP Public Notice #27; GN Docket Nos. 09-47, 09-51, 09-137; CS Docket No. 97-80 (Feb. 23, 2010).

such protection when they license content for cable operators to distribute to consumers. Without such protection, cable operators, and therefore consumers, will not be able to obtain the high value content they both seek.

As another example of the need for some content protection, the reason that a new CableCARD tuner announced at CES 2010 works with Windows PCs is because Microsoft engineered the companion security into Windows Media Center, as part of a multi-industry licensing arrangement among cable, PC OEMs, and Microsoft.[4] SageTV's proposals for stripping DTCP, relying on watermarking and after-the-fact prosecution for theft, abolishing licensing rules, providing for limited techniques for redistribution control as well as its disregard for previously detailed security flaws in comparable proposals,[5] simply ignore the reality of how content providers make programming available to consumers through video retailers like cable operators.

SageTV also mischaracterizes the copyright and constitutional concerns raised by NCTA. Our filing addressed copyright, constitutional, and other legal issues associated with the creative choices made by cable operators in the procurement, grouping, timing, marketing, and presentation of content and associated advertising and applications. In this regard, cable operators have not claimed "exclusive" ownership of metadata. SageTV correctly notes that such guide data is licensable from third parties and this is exactly how SageTV, Microsoft, and TiVo obtain rights to populate their guides. Cable operators obtain guide data from the same third parties. And, contrary to SageTV's suggestion, the cable industry has no objection to the use of competing guides. Under the landmark tru2way agreement, cable operators agreed to pass through guide data to a guide provided by the CE manufacturer in a tru2way device and agreed with CE manufacturers on specifications allowing multiple functions, multiple screens, and multiple feeds to work together in the tru2way device. We have explained repeatedly that parties who wish to use data owned by third parties need to obtain the rights from the rights holder – a view endorsed by consumer electronics manufacturers.[6]

Furthermore, contrary to SageTV's claims, the cable industry is not advocating a "closed ecosystem" for video devices. Just as SageTV advocates, we want a competitive marketplace for video devices and are actively engaged in efforts in support of that goal.

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[4] *See*, *Microsoft and CableLabs Announce Agreement to Enable High-Definition Digital Cable Programming on Windows-Based PCs,* Nov. 16, 2005, *at* http://www.microsoft.com/presspass/press/2005/nov05/11-16CableLabsPR.mspx. Similar content licensing rules are leading the manufacturers of Blu-ray players to drop unprotected analog connectors in favor of protected digital HDMI connectors at the end of this year. *See* Fred Harding, *Say Goodbye to Analog Ports on Blu-ray Players*, CE Pro, Feb. 16, 2010, *at* http://www.cepro.com/article/say_goodbye_to_analog_ports_on_blu_ray_players/K5.

[5] Reply Comments of the National Cable & Telecommunications Association, CS Docket No. 97-80, at Exhibit A, A-2-A-4 (Sept. 10, 2007).

[6] *See, e.g.*, Reply Comments of the National Cable & Telecommunications Association, CS Docket 97 80, at 27 (Sept. 10, 2007); Reply Comments of the National Cable & Telecommunications Association, GN Docket No. 09-51, at 20-21, 30-31, (Jan. 27, 2010). In the tru2way MOU, all parties agreed that "[a]dopters who wish to use the Gemstar data or [data from a] successor guide data provider [are] to independently obtain the rights from Gemstar or such successor entity to use such data."

- The cable industry has provided solutions that enable consumer electronics and other companies to integrate set-top box functionality into DTVs or into stand-alone retail boxes.[7]
- The cable industry is working with the satellite, telephone, IT, and CE industries in DLNA with the goal of sharing video programming within home networks using approved content protection technologies.
- Cable operators are active participants in DECE, the multi-industry consortium to extend the "buy once, play anywhere" model used for DVDs to soft copies of video.
- Cable operators and others are engaged in ongoing efforts to develop and deploy more cost-effective and flexible alternatives to the CableCARD. For example, Cablevision is deploying a new downloadable security technology that is licensable to third-party CE manufacturers.
- The cable industry is also pursuing efforts to bring popular Internet content to the television and supports such capability in retail navigation devices as well.

In short, the cable industry is supporting multiple paths for a retail market in video devices and is building platforms for innovative application developers and device manufacturers to present cable services along with new features and functionalities in their products. We described all of this in detail in our comments and reply comments.

Finally, SageTV says that "the FCC has clearly learned from its past mistakes and now knows what it needs to do." But, in fact, there are no easy answers to these complex issues in an area that affects several industries whose services, products, and business models are constantly changing to take advantage of new technologies and meet the marketplace demands of consumers.[8] The cable industry wants to work with the Commission and other stakeholders on increasing innovation in this area – no one would benefit from that more than the cable industry. However, static technology mandates are not a recipe for success, and, in any event, should not be based on false assumptions or misunderstandings. Rather, new approaches to meeting consumer needs should be fact-based and data-driven and should be accomplished through constructive multi-industry collaboration to which the cable industry is committed. This means

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[7] *See* Jeff Baumgartner, *Funai Makes Tru2way Play*, Light Reading, Dec. 16, 2008, *at* http://www.lightreading.com/document.asp?doc_id=169375&site=cdn; Jeff Baumgartner, *Denver, Chicago First to Get Tru2way TVs*, Light Reading, Oct. 15, 2008, *at* http://www.lightreading.com/document.asp?doc_id=169375&site=cdn; *Silicondust USA, Inc. Announces First Network Attached Dual Digital Tuner with CableCARD™ Support*, Jan. 7, 2010, *at* http://www.silicondust.com/press.

[8] For example, technologies need to be invented to support a high quality, cross-industry cross-protocol method for providing authorization for on-demand on-line purchases via HTML, Flash, Silverlight, AIR, and other methods.

working to find practical solutions to distributing video content, dealing with the economic realities of the content, consumer electronics, and retail businesses, accounting for actual business models and involving all MVPDs in pursuing solutions. These challenges are real and we are committed to working with SageTV and other stakeholders to resolve them.

Respectfully submitted,

/s/ Neal M. Goldberg

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