



National Cable & Telecommunications Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001
(202) 222-2300

www.ncta.com

Neal M. Goldberg
Vice President and General Counsel

(202) 222-2445
(202) 222-2446 Fax

April 8, 2010

EX PARTE

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

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

Dear Ms. Dortch:

On Wednesday, April 7, 2010, James Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, Comcast Corporation, Jonathan Friedman, from the law firm of Willkie Farr and Gallagher LLP, representing Comcast Corporation, and I met with William Lake, Chief of the Media Bureau, and Kris Monteith, Nancy Murphy, Steve Broecker, Alison Neplokh, and Brendan Murray, all of the Media Bureau.

In the meeting, we discussed an issue which apparently will be addressed at the Commission's April 21, 2010, Open Meeting. A recent press report said that, at the April 21 Open meeting, the Commission would consider proposing a "partial exemption" from the integration ban for cable systems with activated channel capacity of 552 MHz or less so that such systems could deploy HD DTAs to their customers and thereby reclaim scarce analog bandwidth.¹ That additional bandwidth could be used for faster Internet speeds, more HD and ethnic channels, and other digital services.

Our discussion with the Media Bureau focused on expanding the proposed HD DTA exemption to *all* cable systems, since all systems – and all consumers – could benefit from the additional services which could be provided over the reclaimed analog bandwidth. In particular, expanding the proposed exemption to all systems would be consistent with the goal of the National Broadband Plan to have broadband deployed to all Americans as rapidly as possible whereas limiting the exemption would undercut the Commission's broadband objectives. Our discussion reflected the arguments in the attached document, copies of which were distributed to Mr. Lake and the Bureau staff.

¹ See Comm. Daily, *CableCARD, Gateway Draft FCC Items to Deal with Retail Device Use*, at 2-3 (Apr. 6, 2010).

Ms. Marlene H. Dortch
April 8, 2010
Page 2

Please do not hesitate to call should you have any questions regarding this filing.

Respectfully submitted,

/s/ Neal M. Goldberg

Neal M. Goldberg

cc: William Lake, Chief, Media Bureau
Kris Monteith
Nancy Murphy
Steve Broeckaert
Alison Neplokh
Brendan Murray

Attachment

**The Commission Should Exempt All DTAs From The Integration/ Ban
And Apply The Exemption To All Cable Systems.**

Background: According to press reports,¹ the draft CableCARD NPRM proposes that, to encourage small cable systems to migrate to all-digital and reclaim scarce analog bandwidth, the Commission should exempt both one-way SD and HD DTAs from the integration ban, but only for cable systems with activated channel capacity of 552 MHz or less. For the following reasons, the Commission should expand the proposed exemption to *all* cable systems.

Limiting the DTA exemption to small cable systems would be inconsistent with the Commission's broadband goals.

- The Broadband Plan emphasized the importance of expanding broadband adoption and accelerating broadband speeds.
- DTAs help advance those goals by providing a low-cost, consumer-friendly way for cable operators to digitize their systems and reclaim analog bandwidth for faster Internet speeds, more HD and ethnic channels, and other digital services.
- Limiting the DTA exemption to small cable systems would impede cable's digitization efforts, and thereby undercut the Commission's broadband objectives.

The DTA exemption should cover all cable systems and all DTAs.

- SD DTAs have played an important role in cable digitization efforts to date. Comcast, for example, is using these devices as part of its efforts to reclaim analog channels for faster Internet and significantly more HD and Spanish-language programming. However, SD DTAs are not a complete solution since they cannot provide access to HD channels.
- As the Commission explained in the *Cable One Waiver Order*, HD is becoming "commonplace" in the video marketplace today, and can no longer be considered an "advanced" service for purposes of the Commission's set-top box waiver policies. *Cable One Waiver Order* ¶ 12.
- According to Kagan, almost 64% of TV households have HDTVs, up from 27% in 2006, and that percentage continues to trend upwards. In addition, there are over 110 HD networks today; all of the top-rated cable networks are simulcast in HD and SD formats; and HD is a standard feature for TVs sold at retail today.
- In light of these marketplace developments, it no longer makes sense to limit relief from the integration ban to one-way SD devices. Such relief should be extended to one-way devices with HD capability as well, and applied to all cable operators, not just small operators.

HD DTAs would provide a low-cost way for cable customers to access one-way HD cable programming services.

- The SD DTAs now being deployed enable cable customers to access one-way SD channels, but not HD channels. To access HD channels on their HDTVs, consumers must use a CableCARD-enabled HD device, which typically costs far more than a DTA.

¹ See Comm Daily at 2-3 (Apr. 6, 2010).

-- In granting the HD DTA waiver to Cable One, the Commission underscored the importance of removing regulatory barriers to consumers using a low-cost, one-way device to access HD channels: “We see no reason to provide a regulatory incentive to deprive consumers of the HD-quality programming they expected and paid for when they purchased their sets.” *Cable One Waiver Order* ¶ 12.

-- At volume, HD DTAs would likely cost under \$50 per device. At that price point, cable operators may be able to provide HD DTAs to their HD customers at little or no additional charge.

There is no basis for limiting these pro-consumer benefits to 552 MHz or less cable systems.

-- These small-capacity cable systems constitute only 8% of all cable systems and cover an even smaller percentage of all cable subscribers.

-- Rather than limiting HD DTAs to this small subset of cable customers, the Commission should let all cable customers take advantage of this low-cost HD box option. Such an approach would be consistent with the Commission’s policies for low-cost STBs, which have not drawn distinctions between large and small operators.

-- Moreover, applying an exemption to all cable systems would help drive down the HD DTA costs for all cable operators and their customers as HD DTAs would be purchased in greater volumes. If, however, HD-DTAs are restricted to small-capacity cable systems, achieving scale economics on the production of HD DTAs would be substantially more difficult to achieve.

-- Also, limiting the HD-DTA exemption to small-capacity systems may inadvertently discourage operators from upgrading their plant capacity in the future.

Exempting HD DTAs would have no adverse effects on common reliance or the retail marketplace for navigation devices.

-- The Commission concluded in the *Cable One Waiver Order* that waivers for one-way HD devices are “unlikely to present a significant impediment to the development of a competitive retail market for navigation devices.” *Cable One Waiver Order* ¶ 13. In fact, an exemption covering HD DTAs would create *no* impediments to the retail marketplace.

-- Exempting HD DTAs would have no impact on the Commission’s common reliance goals, which have already been achieved with the deployment of almost 20 million CableCARD-equipped set-top boxes by cable operators.

-- An exemption for HD DTAs also would have no effect on navigation device competition since there is no retail marketplace for DTAs. The only one-way navigation devices being sold at retail today -- *i.e.*, those manufactured by TiVo and Moxi -- rely on features beyond HD capability for product and service differentiation. These features include DVR capability, interactive TV applications, and access to Internet content from Netflix, Amazon, Blockbuster, and other content sources.