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March 31, 2010

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

via email and Federal Express

**Re: A National Broadband Plan for Our Future; GN Docket Nos. 09-47, 09-51, 09-137;
CS Docket No. 97-80**

Dear Chairman Genachowski:

According to press reports, about eight months ago, Evolution Broadband filed a petition for waiver of the Commission's separable security rule¹ for a low-cost, one-way, limited-function HD device that would be available for under \$100.² On behalf of the American Cable Association ("ACA"), I write to urge the Commission to promptly place Evolution Broadband's petition for waiver on public notice.

In numerous filings in support of set-top box waiver requests, ACA has demonstrated the critical need for the availability of low-cost integrated set-top boxes to small and medium-sized operators. The availability of low-cost integrated digital set-top boxes allows these providers to cost-effectively free up bandwidth in their headends by transitioning analog channels to digital allowing for the deployment of advanced digital services such as broadband at faster speeds and VoIP telephony services in the smaller markets and rural areas they serve.

Unfortunately, today many small and medium-sized operators face a significant dilemma as they seek to transition their systems from analog to digital. Essentially, these providers must choose between: (1) purchasing and deploying low-cost non-HD integrated set-top boxes to consumers, or (2) waiting to see whether the Commission expands the applicability of the *Cable One Order* to permit any cable operator to purchase and deploy low-cost, limited-capability HD set-top boxes.³ In other words, to

¹ 47 C.F.R. § 76.1204(a)(1).

² "Evolution Seeks FCC Waiver For Sub-\$100 HD Set-Top," Multichannel News (July 30, 2009), available at http://www.multichannel.com/article/326064-Evolution_Seeks_FCC_Waiver_For_Sub_100_HD_Set_Top.php (last visited Mar. 31, 2010).

³ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Cable One, Inc.'s Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 24 FCC Rcd. 7882 (2009) ("*Cable One Order*").

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transition popular analog channels to digital, a cable operator must choose between providing consumers with non-HD set-top boxes that have rapidly decreasing usefulness as more consumers purchase HD sets, or simply wait to reclaim bandwidth in hopes that the Commission will waive its separable security rule for low-cost, limited-capability integrated HD set-top boxes at some point in the future. The Commission's delay in publicly addressing this issue – one that has been pending at the Commission since last year – is negatively impacting the marketplace and consumers, particularly in smaller markets and rural areas served by small cable operators.

The public interest benefits associated with transitioning a cable system from analog to digital are clear and compelling. A cable operator that can reclaim bandwidth by transitioning analog channels to digital can use the freed channel capacity to deploy advanced digital services, including additional HD programming, faster broadband speeds, and VoIP telephony services.

With particular regard to broadband, bandwidth reclamation can mean new broadband deployment and higher speeds in the rural and smaller markets served by ACA's members. The new DOCSIS 3.0 standard allows cable operators to reach broadband speeds approaching 100 Mbps through a technique called channel bonding, but the process requires the freeing up of at least four analog channels. In order to obtain this additional channel capacity in a cost-efficient way, many smaller operators must transition existing analog channels to digital. However, many small and medium-sized cable operators are hesitant to move forward for fear of expending valuable capital to purchase low-cost, limited-capability non-HD integrated set-top boxes that have diminishing value to consumers who are increasingly purchasing HD sets. The FCC can jump-start the analog-to-digital transition for smaller, rural cable providers by making an HD version of these devices available for purchase and distribution by operators, laying the necessary groundwork for these operators to thereafter offer faster broadband speeds to consumers in the communities they serve.

By making low-cost, limited-capability HD set-top boxes available, the Commission would also increase the availability of HD programming to consumers throughout their homes, overcoming a significant handicap with the current rules that allow operators to deploy only the non-HD versions of these boxes. The Commission addressed this concern in last year's *Cable One Order*.

[W]e believe that, with the passage of time, ***it is appropriate to add HD functionality to the list of one-way capabilities that can qualify for a waiver of the general rule.*** In 2005, the Commission's tuner mandate had not yet become fully effective and consumers who were purchasing HD sets were likely to be using it as their primary set. Now, however, consumers are purchasing sets of all sizes with HD capabilities and using them throughout their homes. In many cases, consumers do not want two-way interactivity for these sets but simply want to be able to watch one-way programming.... In 2005, HD programming may have been an 'advanced' service but today it is becoming commonplace. ***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.***⁴

ACA agrees with the Commission's assertion. Unfortunately, many consumers are being deprived of the HD programming they expect because of the Commission's current rules that result in expensive HD-capable non-integrated digital set-top boxes.

⁴ *Cable One Order*, 24 FCC Rcd, 7882, 7886, ¶ 12 (emphasis added) (citations omitted).

As part of the National Broadband Plan,⁵ the Commission recommends initiating a proceeding on set-top boxes to ensure that a "gateway device" is installed in all homes requiring set-top boxes by the end of 2012,⁶ as well as making certain CableCARD fixes while development of a gateway device progresses.⁷ This major policy initiative affecting the set-top box market for all MVPDs should neither delay addressing smaller operators' near-term need for low-cost, limited-capability HD set-top boxes, nor deny consumers the immediate benefits that would result from access to such set-top boxes. Attending to smaller cable operators' need for HD-qualifying devices would not affect the Commission's efforts to transform the set-top box marketplace. It would simply allow ACA's members to purchase low-cost, limited-functionality HD set-top boxes until such time as the Commission issues new rules.

With reasonable expectations based on previous set-top box rulemakings,⁸ and the reality that more than a hundred million existing set-top boxes in consumers' homes cannot be replaced overnight, small cable operators recognize that equipment purchased and deployed in the next couple of years will very likely be grandfathered after new rules are adopted. Thus, the fact that the Commission is considering new set-top box rules would not impact smaller operators' interest in purchasing HD devices in the interim. Whatever rules the Commission ultimately adopts, smaller operators would seize the opportunity to purchase low-cost, limited-capability, HD set-top boxes because these devices would have greater usefulness to consumers over a longer period of time than low-cost, non-HD set-top boxes. Moreover, allowing these operators to purchase these devices with HD functionality would not interfere with the Commission's later implementation of new rules. In fact, to the extent that smaller operators have transitioned a greater number of analog channels to digital and are offering higher bandwidth speeds, the introduction of "gateway devices" at that point would be of greater utility to their customers, than based on their systems today, and further the goals set forth in the National Broadband Plan.

The public should have the ability and opportunity to comment on the manifest and compelling public interest benefits associated with the grant of a waiver for low-cost, HD-capable integrated digital set-top boxes. ACA therefore urges the Commission to promptly place Evolution Broadband's petition for waiver on public notice.

Sincerely,



Matthew M. Polka
President and CEO
American Cable Association

cc (via email): Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker
Blair Levin, Executive Director, Omnibus Broadband Initiative
William Lake, Chief, Media Bureau

⁵ *Connecting America: The National Broadband Plan* (rel Mar. 16, 2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (last visited Mar. 31, 2010).

⁶ *Id.* at 51-52.

⁷ *Id.* at 52.

⁸ See, e.g., *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 (2005) (prohibiting MVPDs subject to the Integration Ban from supplying "new" integrated set-top boxes to subscribers after July 1, 2007).