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April 14, 2010

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

Re: CSR-7902-Z, CS Docket No. 97-80, GN Docket Nos. 09-51, 09-47, 09-137.

Dear Ms. Dortch:

NCTA takes this opportunity to respond briefly to an *ex parte* letter filed by Public Knowledge in the above-captioned proceedings on April, 13, 2010 regarding set-top box issues.¹

First, Public Knowledge argues that the Commission should resolve its petition for reconsideration of the *Evolution Broadband Waiver Order* before considering exemptions of the integration ban for digital terminal adapters (“DTAs”).² NCTA and others have explained previously why Public Knowledge’s petition is entirely without merit and should be denied.³ For purposes of this filing, NCTA merely wishes to point out that Public Knowledge’s position here flatly contradicts the position it takes in its petition for reconsideration where it argues that the Commission “must now determine ‘whether low-cost, limited capability boxes should be subject to the integration ban or whether cable operators should be permitted to offer such low-cost limited capability boxes on an integrated basis.’”⁴ According to press reports, the Commission will be inviting comment on that precise question in the upcoming Notice of Proposed Rulemaking on CableCARD-related issues.⁵ Having gotten what it wished for, Public Knowledge cannot now claim that it would be inappropriate to take up the DTA issue in that rulemaking.

¹ See Letter from Michael Weinberg, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, CSR-7902-Z, CS Docket No. 97-80, GN Docket No. 09-51 (Apr. 13, 2010) (“PK Letter”).

² See *id.* at 1.

³ See Opposition of NCTA, CSR-7902-Z, CS Docket No. 97-80 (July 9, 2009); Joint Opposition of Motorola, Cisco, Pace, Thomson, and NagraVision, CSR-7902-Z, CS Docket No. 97-80 (July 9, 2009); Opposition of Disney, CSR-7902-Z, CS Docket No. 97-80 (July 9, 2009) (“Disney Opposition”); Opposition of Evolution Broadband, CSR-7902-Z, CS Docket No. 97-80 (July 9, 2009); Opposition of American Cable Association, CSR-7902-Z, CS Docket No. 97-80 (July 9, 2009).

⁴ Petition for Reconsideration of Public Knowledge *et al.*, CSR-7902-Z, CS Docket No. 97-80, at 7 (June 29, 2009).

⁵ See *CableCARD Notice Changes Expected for Large Systems’ HD Boxes*, Comm. Daily, at 3-4 (Apr. 13, 2010).

There also is no basis to Public Knowledge's claim that "[t]he current waiver process has injured companies who, in good faith, invested in developing compliant set top boxes with the intention of bringing them to market."⁶ Public Knowledge appears to be referring here to a *single* company – IPCO – that has claimed competitive harm from the DTA waivers.⁷ NCTA has previously explained that: (1) IPCO's set-top boxes do *not* comply with CableCARD requirements; (2) its boxes are *not* being deployed in the marketplace today; and (3) its boxes are *not* cost-competitive with DTAs.⁸ In sum, the notion that cable operators could simply start buying these non-compliant IPCO boxes today in lieu of DTAs or CableCARD-enabled boxes is unsupported.

Public Knowledge also asserts that "[c]reating exceptions to set top box rules that would allow operators to offer high-functioning boxes would undermine any efforts to create a viable consumer market for set top boxes."⁹ Here again, Public Knowledge misses the mark. The suggestion that DTAs are "high-functioning" devices is absurd. DTAs are small, low-cost devices – typically \$50 or less at volume – whose function is limited to accessing one-way programming services.¹⁰ Moreover, the only Unidirectional Digital Cable Ready Products available at retail today – those manufactured by TiVo and Moxi – have far more advanced functionality in order to differentiate themselves in a consumer electronics ("CE") marketplace where HD has become a standard feature.¹¹ In fact, both TiVo and Moxi emphasize on their web sites the more advanced capabilities of their CableCARD devices, such as multiple tuning, DVR capability, interactive TV applications, and access to Internet content.¹² Public Knowledge provides no evidence whatsoever that there is any CE manufacturer interest in building DTAs for retail, that retailers have any interest in stocking such devices, or that consumers would have any interest in buying them.

Finally, contrary to Public Knowledge's claims, DTAs have substantial consumer benefits and are critical to cable operators' digitization efforts and the Commission's broadband goals.¹³ And, particularly with respect to HD DTAs, applying an exemption to all cable systems

⁶ PK Letter at 1.

⁷ See Letter from Harold Feld, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, CSR-7902-Z, CS Docket No. 97-80 (Dec. 8, 2009); see also Letter from James E. Meyers, Counsel for IPCO, to Marlene H. Dortch, Secretary, FCC, CSR-7902-Z, CS Docket No. 97-80 (Apr. 6, 2010).

⁸ See Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, Secretary FCC, CSR-7902-Z, CS Docket No. 97-80 (Dec. 22, 2009); see also Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, Secretary, FCC, CSR-7902-Z, CS Docket No. 97-80 (Apr. 13, 2010).

⁹ PK Letter at 1.

¹⁰ See Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, Secretary, FCC, CS Docket No. 97-80, GN Docket Nos. 09-47, 09-51, 09-137 (Apr. 12, 2010).

¹¹ Letter from Pace Americas, Inc., *et al.*, to Marlene H. Dortch, Secretary, FCC, CS Docket No. 97-80, GN Docket Nos. 09-47, 09-51, 09-137, at 1-2 (Apr. 13, 2010) ("NCTA Apr. 12, 2010 Letter").

¹² See TiVo, Inc., at <http://www.tivo.com/products/tivo-premiere/premiere-compare.html#tab> (comparing the functionality of TiVo DVRs with cable set-top boxes); Moxi, Moxi 3-Tuner HD DVR, at http://moxi.com/us/moxi_dvr.html (detailing features of Moxi DVRs).

¹³ See NCTA Apr. 12, 2010 Letter at 3.

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would help drive down the cost of such devices 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 economies on the production of HD DTAs would be substantially more difficult.

In light of these substantial benefits, and the absence of any countervailing harms, the Commission should exempt all DTAs from the integration ban and extend such an exemption to all cable systems.

Respectfully submitted,

/s/ Neal M. Goldberg

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