

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

_____)	
In the Matter of:)	
)	
Implementation of Section 304 of the)	CS Docket No. 97-80
Telecommunications Act of 1996;)	
)	
Commercial Availability of Navigation)	
Devices)	
)	
Compatibility Between Cable Systems and)	PP Docket NO. 00-67
Consumer Electronics Equipment)	
_____)	

COMMENTS OF VERIZON

Michael E. Glover
Of Counsel

Edward Shakin
William H. Johnson
VERIZON
1320 North Courthouse Road
Ninth Floor
Arlington, Virginia 22201

June 14, 2010

Attorneys for Verizon

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY.....	1
II. THE COMMISSION SHOULD NOT REQUIRE THAT CABLECARD DEVICES BE ABLE TO ACCESS SWITCHED DIGITAL VIDEO.....	3
III. THE COMMISSION’S PROPOSAL TO REGULATE THE PRICING AND BILLING OF CABLECARDS CONSTITUTES BOTH IMPERMISSIBLE RATE REGULATION AND BAD POLICY.....	5
IV. THE COMMISSION SHOULD NOT TAKE ANY OTHER ACTION TO REQUIRE FURTHER INVESTMENT IN SPECIFIC TECHNOLOGIES.....	7
V. CONCLUSION	11

I. INTRODUCTION AND SUMMARY

The Commission has already recognized that CableCARD represents a largely failed experiment. Though the CableCARD mandate was intended to increase the commercial availability of navigation devices pursuant to Section 629, consumer demand for retail devices with CableCARDS has been quite low, and “many retail device manufacturers abandoned CableCARD as a solution to develop a retail market before any substantial benefits of the integration ban could be realized.”¹ Given this history, the Commission readily admits that CableCARD is an “aging technology,” and the development (without regulatory compulsion) of more effective solutions that are already increasing the devices available for consumers, there is simply no reason to adopt new rules for CableCARD’s “aging technology” to extend the technology past its lifecycle. Doing so would yield no benefits to consumers and new efforts to extend CableCARD regulations would distract from other consumer-driven efforts underway that are increasing the device choices available to consumers. Moreover, the Commission should take from the CableCARD experience a broader lesson: Mandating the use of particular technologies is a recipe for failure. Instead of going further down that path, the Commission should encourage the marketplace developments that are already well underway and will achieve the goals of Section 629 in ways that technology mandates could not. As evidenced by both the ongoing significant industry-standards-setting work and the growing number of devices for consumers to choose from on the shelves of

¹ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Fourth Further Notice of Proposed Rulemaking, 25 FCC Rcd 4303, ¶ 8 (2010) (“FNPRM”) (noting, in addition, that since July 1, 2007, cable operators have deployed only 489,000 CableCARDS for installation in retail devices, as compared to 18.5 million leased set top boxes).

electronics stores, convergence and the migration to Internet Protocol (IP) as a *de facto* standard for the transmission between devices are well underway without any regulatory mandate.

Given this progress in the absence of new technology mandates, the Commission should not adopt those rules proposed in the *FNPRM*, which would add costs to transitioning to new technologies, further entrench devices relying on cable-centric technology, and potentially cause significant disruption to both consumers and providers late in the life-cycle of this obsolete standard. *First*, the Commission should not require that CableCARD devices be able to access switched digital video. Although Verizon does not utilize switched digital video technology, it is clear as a general matter that applying existing and failed standards like CableCARD to new services or technologies will lead to needless expense and regulatory uncertainty, and ultimately will stifle innovation. *Second*, the Commission's proposal to regulate the pricing and billing of CableCARDS is both generally unwise, given the consumer confusion that would follow, and unlawful, and all the more so as applied to competitive providers. *Third*, the Commission should not impose any further technological mandates, such as requiring providers to support bi-directional communications across various interfaces. The Commission should instead take this opportunity to remove existing outmoded technology mandates, especially rules requiring the use of CableCARDS and the 1394 interface—a digital output that, under the Commission's Rules, must be included in all high definition set-top boxes, even though it adds considerable cost and consumers have demonstrated a strong preference for other home networking standards.

II. THE COMMISSION SHOULD NOT REQUIRE THAT CABLECARD DEVICES BE ABLE TO ACCESS SWITCHED DIGITAL VIDEO.

The Commission proposes that retail CableCARD devices be able to access linear video content that cable operators may have migrated to switched digital video.² Because Verizon does not use switched digital video technology, Verizon's service would be outside the scope of this proposed mandate. However, while Verizon does not use switched digital video technology, the company remains concerned about extending existing technological mandates – especially those that require further investment in CableCARDS – to new services and technologies, and the Commission should not do so.

Subjecting an entire new class of service and technological approach to the CableCARD mandate is inconsistent with the Commission's goal of adopting purely interim measures with an eye toward eventually winding down CableCARD use. If device makers and service providers are required to invest the research and development resources to adapt their offerings to a new CableCARD mandate, it is likely to further entrench this failed standard and make it more difficult for truly innovative, market-driven solutions to develop as such a mandate would divert time, money, and resources that could be devoted to more beneficial work. Imposing CableCARD mandates on new services and technologies could also send confusing regulatory signals to the marketplace.

Distracting from or interfering with ongoing marketplace developments would be particularly unfortunate here, where the marketplace is already working to overcome existing technological limitations on video devices, and is doing so in an open, neutral and technology-agnostic manner. The transition to IP video, and the standards-setting

² *FNPRM* ¶ 14.

work that is currently taking place in that regard, has obviated any justification for CableCARD-type mandates in accessing digital video content and will enable devices that fulfill the goals underlying Section 629. For example, the Alliance for Telecommunications Industry Solutions (ATIS) is already working on several relevant projects in this area, including VueKey™, a downloadable conditional access system that can be used with retail devices.

What is more, with just 1% of all subscribers choosing to use CableCARDS,³ consumers are driving providers to seek out alternatives. Without consumer demand for CableCARDS, an “interim” expansion of the CableCARD mandate followed by a shift to different technologies likely would result in customer frustration and slow the roll-out of the next generation of navigation devices. Rather than diverting attention and resources to expanding the CableCARD mandate, even on an “interim” basis, the Commission should instead encourage open and accredited industry standards-setting bodies to continue ongoing work on the development of platform- and technology-neutral solutions that benefit consumers.

Because expanding the CableCARD mandate even to a transitory service like switched digital video would harm consumers and distort the market, the Commission should also avoid imposing mandates of this type on any other services. In particular, the FCC should ensure that technological mandates such as this do not disrupt developments and momentum in using other technologies, such as the IP-based video services. Increased use of IP – already the *de facto* standard for most home networking – will facilitate greater choice in devices and more opportunity for new competition and

³ See *FNPRM* ¶ 9.

innovation, but any new mandates could upend that ongoing process. The Commission should leave behind the failed approach of technology mandates and focus on continued market-driven evolution of navigation device technologies.

III. THE COMMISSION’S PROPOSAL TO REGULATE THE PRICING AND BILLING OF CABLECARDS CONSTITUTES BOTH IMPERMISSIBLE RATE REGULATION AND BAD POLICY.

The *FNPRM* asks whether the Commission should define the manner in which video providers charge for CableCARD services.⁴ Even if the Commission had specific authority to impose such a requirement, which it does not, the proposed pricing and billing rules would be unwise. At present, consumers are fully able to compare the bottom line, total price of leasing a set-top box to the costs of purchasing and using a retail device and leasing a CableCARD. This is precisely the information that customers need to determine whether it is more cost-effective to lease their equipment from the provider or to purchase their navigation devices from a third party. Customers would gain no additional useful information if providers separated out a line item for a leased CableCARD on subscriber bills. In fact, doing so would likely cause a great deal of confusion and frustration for the vast majority of consumers who lease their boxes from their video provider. Customers leasing set-top boxes would undoubtedly be upset by the addition of a new charge on their bill, which they would have no option to decline, and such a mandate would require a substantial customer education campaign to explain the origin of the charge, the purpose of the charge, and the fact that despite the addition of a new line item, overall charges are not meant to increase.

⁴ See *id.* ¶ 15.

Moreover, the Commission's proposal to define the manner in which video providers charge for CableCARD services is without authority, and that is all the more true if applied to competitive providers where there are specific prohibitions against rate regulation. The *FNPRM* identifies no statutory provision that directly authorizes the Commission to impose such a requirement, and indeed none exists.

If the Commission asserts that it may impose such a requirement pursuant to its authority to regulate rates of certain providers under Section 623, then the proposed requirement could not be applied to competitive providers. Section 623 provides that where a cable system is "subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation."⁵ As a new entrant that is challenging both incumbent cable providers and satellite providers everywhere it offers service, Verizon is subject to effective competition everywhere that it offers service, and therefore is not be subject to rate regulation either by the Commission or by state or local franchising authorities under the Cable Act.⁶

Even if the Commission does not explicitly rely on its rate-making authority under Section 623 in order to promulgate these regulations, this proposal would still be unlawful as applied to competitive providers because it would make competitive providers' rates "subject to" regulation in two respects. First, by requiring providers to create and itemize a charge for the CableCARD that comes with most leased set-top boxes, the requirement would dictate the manner in which a cable provider organizes and

⁵ See 47 U.S.C. § 543(a)(2).

⁶ See, e.g., *Media Bureau Clarifies Issues Concerning Franchise Authority Certification to Regulate Rates*, Public Notice, 24 FCC Rcd 399 (2009) (clarifying that new entrants are presumed to be subject to effective competition).

presents its bill. Second, the Commission’s proposed rule strikes at the heart of rate regulation by establishing what does and does not constitute a permissible rate. The rule as proposed would require operators to allocate equipment costs “fairly” in order to determine a separate lease fee for CableCARDS that are included in leased set-top boxes and list that fee as a separate line item on subscriber bills.⁷ The Commission intends specifically “that subscribers who choose to use CableCARDS in retail devices will be leasing their CableCARDS at a rate equivalent to those who use CableCARDS in leased devices.”⁸ Accordingly, this proposal regulates both the operators’ rate structure and the billing format, thereby directly regulating rates—exactly what the Commission is prohibited from doing to providers that face effective competition.

Ultimately, the proposal would result in no new information provided, and the most likely outcome would be consumer confusion. As such, the Commission should refrain further raising the profile of the CableCARD mandate and instead focus on ensuring the continuation of ongoing innovative marketplace developments.

IV. THE COMMISSION SHOULD NOT TAKE ANY OTHER ACTION TO REQUIRE FURTHER INVESTMENT IN SPECIFIC TECHNOLOGIES.

The Commission should learn from its failed experiment with the CableCARD mandate and turn away from any approach that would impose any technology mandates. At a minimum, the Commission must ensure that its regulations do not distort the development of IP technology. Various providers use different means of transmitting IP; some utilize standards such as Multimedia over Coax Alliance (MoCA), while others employ WiFi and other standards. But the problem with mandating even a broad list of

⁷ *FNPRM* ¶ 15.

⁸ *Id.*

standards below the IP level is that existing or yet-to-be-developed standards would inevitably be left off the list. Indeed, MoCA, the standard used by Verizon and now being commonly deployed by video providers, was left off the Commission's proposed list. Adopting rules that gave a regulatory advantage to a particular standard or set of standards would place other standards (and the providers who use them) at a marked disadvantage and would slow the adoption of new technologies.

Moreover, the Commission should not require cable operators to support bi-directional communications over specific interfaces, including the IEEE 1394 interface, a costly digital output that the Commission's Rules require be included in all high definition set-top boxes.⁹ Beyond the concerns with entrenching the CableCARD mandate, this proposal should be rejected for another reason—it seeks to make the IEEE 1394 standard more robust when instead the Commission should be eliminating these technology mandates that do more harm than good to consumers.

As Verizon has noted in the past, the 1394 interface goes largely unused and manufacturers can provide consumers with a richer media experience at lower cost through the use of newer technologies.¹⁰ Moreover, virtually no home entertainment products that receive content from set-top boxes and other consumer electronic devices rely on the 1394 interface for recording or home networking.¹¹ Without associated

⁹ See *FNPRM* ¶ 21; see also 47 C.F.R. § 74.640(b)(4) (detailing the IEEE 1394 requirement).

¹⁰ Comments of Verizon – NBP Public Notice #27, *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket No. 97-80, GN Docket Nos. 09-47, 09-51 and 09-137 (Dec. 22, 2009).

¹¹ *Id.*

regulatory mandates or costs, other digital outputs, such as high definition multimedia interface (HDMI), are more popular and should be encouraged. To the extent that consumers do use the 1394 interface, such use is generally limited to the transport of data files from digital cameras and other electronic devices to personal computers. But even in that context, the 1394 interface is being replaced with USB and other digital connectors. And notwithstanding the lack of practical utility for 1394 interfaces in set-top boxes, consumers bear the substantial costs associated with the licensing fees that result from the inclusion of this interface in all set-top boxes.

The Commission's proposals would require several other "interim" steps, including mandating multi-stream CableCARDS and self-installation protocols, that would have the effect of slowing the industry's move to a successor technology or technologies to CableCARDS. Though also envisioned as temporary, these steps would require operators to continue to make investments and divert time, money, and resources in a cable-centric technology that is on its way out rather than towards a more productive effort. Moreover, because providers already have the incentives in place to respond to consumer demand, these mandates are simply unnecessary. For example, Verizon and many others already provide multi-stream cards, even though few devices have been made available that take advantage of this technology. Given that the marketplace is already working effectively to increase the availability of multi-stream cards, the Commission should not interfere.¹²

¹² See *FNPRM* ¶ 17.

Similarly, providers should be able to determine, to the extent that it makes sense for consumers, whether or not to support a self-installation procedure.¹³ Currently, Verizon requires professional installation of CableCARDS because installing CableCARDS can be complicated, even for trained technicians, and because customers have not expressed any real demand for self-installation. Installing a CableCARD is not simply a matter of plugging a card into the navigation device. Once the CableCARD is physically installed, both the navigation device and the network must be configured to recognize one another, a procedure that requires the entry of numerous strings of codes and coordination between the installer and the service provider. Even putting aside the complications of self-installation, customers have not demanded it. Given the very low demonstrated demand for CableCARDS in retail devices, with just 1% of all subscribers choosing to use CableCARDS,¹⁴ a regulatory requirement to support self-installation makes little sense. Furthermore, the *FNPRM* identifies no statutory provision that would authorize the Commission to promulgate such a requirement.

Rather than encourage this investment in a dead-end technology, the Commission should take steps to encourage new technologies both in navigation devices and the delivery of video programming. For instance, the Commission's provision of additional flexibility through the expansion of the integration ban waiver to include some high definition navigation devices is a step in the right direction.¹⁵ The Commission should continue to move in this direction and move beyond the failed CableCARD requirements.

¹³ See *id.* ¶ 16.

¹⁴ See *id.* ¶ 9.

¹⁵ See *id.* ¶ 22.

V. CONCLUSION

For the foregoing reasons, the Commission should not adopt the rules proposed in the *FNPRM*. The Commission should instead avoid the failures of the CableCARD regime going forward by turning away from the failed approach of imposing technology mandates, and should instead encourage market-based solutions that follow consumer demand, and remove existing, outdated requirements.

Respectfully submitted,

BY: /s/ Edward Shakin

Michael E. Glover
Of Counsel

Edward Shakin
William H. Johnson
VERIZON
1320 North Courthouse Road
Ninth Floor
Arlington, Virginia 22201

June 14, 2010

Attorneys for Verizon