Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS OF
JOHN STAURULAKIS, INC.

I. INTRODUCTION

John Staurulakis, Inc. ("JSI") submits these comments in response to the FCC's Fourth Further Notice of Proposed Rulemaking ("FNPRM")[1] in the above-captioned dockets. JSI is a consulting firm offering regulatory, financial and business development services to more than sixty small coax and IPTV video service providers.

JSI commends the FCC for examining the continued relevance of the CableCARD regime in light of new technological developments in the industry. JSI believes that CableCARDs will not have long-term viability and, in the meantime, the FCC's proposed rule changes will create significant new costs that will threaten the financial health of small video service providers. Among other things, the FCC's proposed changes will call for CableCARDs with increased functionality that are more expensive, increasing providers' inventory costs, as well as changes to provider billing

[1] *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80; PP Docket No. 00-67, FCC 10-61 (rel. Apr. 21, 2010) ("FNPRM").

systems to comply with the Commission's transparent pricing proposal. The proposed rule changes also fail to address IPTV technology and the lack of CableCARD standards that exist for those systems. Finally, JSI supports the FCC's proposal to modify its rules to allow service providers to use unidirectional set-top boxes, including high definition ("HD") boxes, without digital video recording ("DVR") functions.

II. THE FCC'S PROPOSAL TO REFORM THE CABLECARD SYSTEM WILL FORCE PROHIBITIVELY EXPENSIVE CHANGES UPON SMALL SERVICE PROVIDERS

In the FNPRM, the FCC tentatively concluded that the CableCARD regime is not possible as a long-term solution because of incompatibility issues between video operators' services and retail navigation devices. Ultimately, the FCC will seek to replace the CableCARD regime with a successor solution, as it has indicated in the Notice of Inquiry ("NOI"), released at the same time as this FNPRM.[2]

a. Proposed Requirements for Access to Linear Channels over Switched Digital Video and the Provision of Multi-Stream CableCARDs Will Further Increase the Cost of Providing CableCARDs.

The FCC acknowledges that unilateral digital cable-ready products ("UDCPs") cannot be used with a CableCARD to access linear channels delivered by switched digital video ("SDV") technology and cites to a commercial solution that would allow UDCPs to access linear programming through SDV, in some instances, via a tuning adapter, as well as to another alternative that would place viewing functionality in the CableCARD itself.[3] Since SDV, "by its very nature requires bidirectional communications with the

[2] *Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 10-191, CS Docket No. 97-80, PP Docket No. 00-67, FCC 10-60 (rel. Apr. 21, 2010) ("NOI").
[3] FNPRM, ¶ 14.

subscriber,"[4] an operator would have to supply a tuning adapter or an enhanced CableCARD to any subscriber with UDCPs or OpenCable Unidirectional Receivers ("OCURs") in order to be able to access linear channels over SDV. The FCC is considering whether to require cable providers to ensure that subscribers with UDCPs have access to linear channels through SDV, which would require cable operators to incur additional cost to provide the tuning adapter or enhanced CableCARD to requesting subscribers.

Many small cable operators do not offer SDV for linear channels so there would be no benefit in requiring such carriers to incur the additional cost of providing an enhanced CableCARD. Even when a small cable provider does offer some limited SDV, any new requirement for CableCARDs or tuning adapters would create a considerable cost burden for small operators that already contend with significant costs to supply set top boxes even with basic CableCards and have higher programming costs over national competitors.

Generally, a subscriber that has an operator-leased set top box or a "tru2way" retail device will already be able to access pre-scheduled cable programming through SDV technology.[5] Therefore, only subscribers using UDCPs or OCURs will need the tuning adapter. Currently, a mere 5% or less of a small cable provider's subscribers may be requesting unidirectional CableCARDs. This low percentage of subscribers requesting bidirectional capability would not justify the additional cost of maintaining a supply of tuning adapters in a small cable provider's inventory.

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[4] CableLabs, Switched Digital Video Tuning Adapter FAQ ¶ 2 *at* www.cablelabs.com/opencable/udcp/downloads/switched-digital-video-tuning.

[5] *Id.*

The FCC has also proposed to require cable operators to provide multi-stream CableCARDs to subscribers. As previously stated, the low percentage of requests for CableCARDs from small, rural cable operators does not justify the costs to an operator to supply such CableCARDs. Such costs to maintain a supply of multi-stream CableCARDs for the rare instance where a subscriber requests such capability would be cost prohibitive for small cable providers. If a cable operator is unable to maintain its financial viability due to these unjustified costs, the FCC's cable rules quickly fall out of the public interest, as consumers' choices for video service providers is diminished.

b. Proposed Requirements for Equivalent and Transparent Pricing Will Require Implementation of Costly New Billing Processes and Systems.

The FCC should not require providers to expend additional cost to provide the price of a CableCARD as a separate line item on each subscriber's bill. The cost of required modifications to a provider's billing system and printing demands under this requirement could work to defeat the small margin that a cable provider is able to extract from its CableCARD pricing. Since smaller cable systems have smaller subscriber bases overall, there are fewer subscribers over which to spread the fixed costs of a billing system modification. The result is that smaller systems will have disproportionately higher costs to comply with this requirement.

Instead, if the FCC aims to ensure that cable customers are privy to available retail options as well as the associated costs, the FCC should allow a cable operator to comply with a requirement to disclose CableCARD pricing by posting unit prices on its website or in a publication available for public viewing. Allowing a cable operator to make a singular posting or publication available for viewing by its subscribers would preserve the Commission's goal of transparency for pricing, while sparing significant costs to small cable providers.

III. THE FCC SHOULD PROVIDE A CLARIFICATION OR WAIVER FOR SERVICE PROVIDERS PROVIDING VIDEO SERVICES OVER IPTV SYSTEMS.

a. The FCC Should Clarify that IPTV Systems Are Compliant with the FCC's Integration Ban.

IPTV technology is a digital video solution delivered over a high-speed connection. The IPTV Service Providers are using existing telecommunications infrastructure, including the core fiber optic network and twisted copper pairs, or fiber-to-the-home ("FTTH"), to subscriber premises, to deliver both IP video and high-speed internet services.

In 2007, many IPTV providers sought waiver of the FCC's open interface requirement.[6] Although, IPTV petitioners demonstrated compliance with the FCC's integration ban, the FCC ultimately granted the IPTV petitioners, as well as many other service providers utilizing a number of different system technologies, a waiver of section 76.1204(a)(1) implementing the integration ban.[7] Under any circumstance, however, the waivers allowed IPTV providers to continue provisioning integrated, basic, unidirectional set top boxes without HD or DVR functions to subscribers. The FCC's rationale was that

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[6] *IPTV Operators Group #2 Group Petition for Waiver of 47 C.F.R. § 76.1204(b); Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation* Devices, CS Docket No. 97-80, p.10 (filed Jun. 19, 2007) ("*IPTV Petition for Waiver")* (the Petitioners sought waiver of the FCC's open interface requirement "until such time as a national standard has been developed, or until the FCC has defined the criteria for common reliance, and vendors have had the opportunity to develop products in accordance with such standard or criteria.").

[7] *Consolidated Requests for Waiver of Section 76.1204(a)91) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket No. 97-80 ¶ *53* et seq. (rel. Jun. 29, 2007) ("*All Digital Waiver Grant Order")*. In addition to IPTV, the FCC also granted waiver to users of coax systems, QAM modulation, and asynchronous transfer mode ("ATM") networks.

since IPTV providers had already achieved the goal of going all-digital, it would allow the waiver grant.

Although the FCC has yet to rule on the nature of IPTV systems and whether they are compliant with section 76.1204(a)(1), the IPTV Service Providers still maintain that IPTV technology is already in compliance with the integration ban because it contains non-integrated downloadable conditional access ("DCAS") functions.[8] The IPTV Service Providers urge the Commission, to find that IPTV technology is in compliance with the integration ban. JSI also supports the pending Request for Declaratory Ruling submitted by OPASTCO and NTCA[9] and urges the FCC to grant the requested relief to establish how IPTV operators can comply with section 76.1204.[10]

b. Certain Proposed CableCARD Rule Changes Don't Make Sense for IPTV Systems.

Under the FNPRM, the FCC is proposing several modifications to its CableCARD rules. To date, the industry still lacks a commercially available CableCARD standard for IPTV systems. Accordingly, enforcing any CableCARD regulations upon IPTV operators would not make sense since IPTV operators do not have the means in which to comply. Since industry standards bodies have yet to achieve a workable basic CableCARD standard, there is no need to impose the additional requirement of having providers offer multi-stream CableCARDs. There are no IPTV standards for multi-stream CableCARDs either.

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[8] The non-integrated conditional access functions are explained in detail in the Technical Synopsis provided in Exhibit B.

[9] *Petition for Clarification or, in the Alternative, Waiver of Section 76.1204(a), (b) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Petition for Clarification, CS Docket No. 97-80 (filed May 4, 2007) ("*Petition for Clarification*").

[10] *See generally Petition for Clarification.*

IV. THE FCC SHOULD PROCEED WITH ITS PROPOSED RULE CHANGES THAT WILL ALLOW CABLE PROVIDERS TO DEPLOY INTEGRATED, ONE-WAY NAVIGATION DEVICES, INCLUDING HIGH DEFINITION DEVICES.

JSI commends the FCC on promoting the cable digital transition by proposing to modify its rules to allow cable operators to deploy integrated, one-way navigation devices, to include high definition devices, on a going-forward basis. High definition service is rapidly transforming from an enhanced offering to a standard offering. In light of the interim basis for the FCC's proposed modifications to the CableCARD rules under this proceeding, such a rule modification will advance providers' ability to provide all-digital cable service and complete network upgrades. Expanding the waiver is especially significant since the FCC considers CableCARDs requirement is an interim solution to the extent that FCC will overhaul the entire CableCARD system, as it has suggested in the AllVid NOI.

In the alternative, however, if the FCC decides not to modify its rules with respect to all providers, it should afford relief to small cable systems. With high costs already faced by smaller cable systems to deploy set top boxes and the likelihood of incurring higher programming costs, on average, an interim investment to comply the FCC's rules could threaten the financial viability of a small cable provider. Furthermore, a small cable system would not be able to recoup any such investment if equipment becomes obsolete under the FCC's proposed AllVid migration.

V. CONCLUSION

As it contemplates migration from the CableCARD regime to a new AllVid model regulatory regime, the FCC should take a hard look at the costs that will be incurred by all cable providers on strictly an interim basis. The costs for new inventory and billing system modifications do not make sense considering the temporary nature of these interim proposed rule changes. Cable providers stand to make considerable investments that will not be recouped once network equipment becomes obsolete under a new regulatory regime.

Small cable providers will suffer the greatest harm with lower subscriber numbers and the inability to spread fixed costs far enough to gain sufficient margins. Under the FCC's proposed rule changes, small cable providers will be at an increased risk of financial harm in the event that the FCC imposes interim changes to its CableCARD rules with increased costs for CableCARDs and modified billing obligations.

Furthermore, IPTV providers are still in the dark about whether they are already in compliance with the FCC's integration ban and how to go about complying with CableCARD regulations when there are no CableCARD standards available.

JSI respectfully requests that the Commission take these comments under serious consideration and grant the relief requested herein.

Respectfully submitted,

June 14, 2010 **John Staurulakis, Inc.**

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