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	)	
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	PP Docket No. 00-67

COMMENTS OF TIME WARNER CABLE INC.

Steven N. Teplitz
Cristina Pauzé
TIME WARNER CABLE INC.
901 F Street, NW, Suite 800
Washington, DC 20004

Matthew A. Brill
Brian W. Murray
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004

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SUMMARY

As a leader in the development of the CableCARD and similar initiatives to promote the commercial availability of navigation devices, Time Warner Cable Inc. ("TWC") supports the basic goals underlying the Notice of Proposed Rulemaking ("NPRM") as well as the more comprehensive objectives animating the Commission's companion Notice of Inquiry. Particularly given the Commission's stated plans to phase out reliance on CableCARDs, however, the Commission should ensure that the burdens associated with any short-term rule changes do not outweigh the anticipated benefits. Indeed, as the marketplace continues to drive innovative solutions that are expanding choices for all consumers, the Commission should approach all proposals for new regulatory mandates with skepticism in this context, focusing instead on measures that will expand cable operators' flexibility to meet their customers' needs.

With these overarching principles in mind, TWC addresses several proposals raised by the NPRM. *First*, the Commission need not and should not take further action to replace tuning adapters, which are working well to address the needs of the limited population of cable subscribers who use one-way CableCARD devices. *Second*, rather than dictating the manner in which cable operators manage CableCARD installations, the Commission should preserve operators' flexibility to implement whatever approaches (potentially including self-installations) they believe will meet their customers' needs. *Third*, notwithstanding the importance of transparency, the Commission should carefully consider the costs and benefits of any requirement that cable operators itemize CableCARD prices on customer bills and permit flexibility regarding how such information is conveyed. *Fourth,* the Commission should adopt its proposal to exempt from the integration ban low-cost digital navigation devices in order to promote the entire cable industry's transition to all-digital operations, rather than limiting such relief to small cable

systems. *Finally*, the Commission should modify its rules, as the NPRM proposes, to afford cable operators greater flexibility with respect to required interfaces.

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Time Warner Cable Inc. ("TWC") respectfully submits these comments in response to the Commission's Fourth Further Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket.[1] The NPRM proposes several "relatively minor adjustments" to the Commission's CableCARD rules in an effort to "extend the viability" of this technology and thereby promote the commercial availability of navigation devices.[2] As a leader in the development of the CableCARD and similar initiatives, TWC supports the basic goals underlying the NPRM as well as the more comprehensive objectives animating the companion Notice of Inquiry.[3] In particular, TWC applauds the Commission for proposing to eliminate unnecessary mandates relating to output technologies and to permit greater flexibility in deploying low-cost digital set-top boxes that integrate navigation and security functions. In light

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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, CS Docket No. 97-80, PP Docket No. 00-67 (rel. Apr. 21, 2010) ("NPRM").

2 *Id.* ¶ 12.

3 *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*, Notice of Inquiry, MB Docket No. 10-91, *et al.* (rel. Apr. 21, 2010) ("NOI").

of the Commission's stated plans to phase out reliance on CableCARDs, however, the Commission should ensure that the burdens associated with any short-term rule changes do not outweigh the anticipated benefits. Indeed, as the marketplace continues to drive innovative solutions that are expanding choices for all consumers, the Commission should approach all proposals for new regulatory mandates with skepticism in this context, focusing instead on measures that will expand cable operators' flexibility to meet their customers' needs.

INTRODUCTION AND BACKGROUND

TWC is the nation's second-largest cable operator, serving approximately 14.7 million customers, including more than 13 million video subscribers, in 28 different states. In order to differentiate its services in an increasingly competitive marketplace, TWC seeks to ensure that its customers can access any content, anywhere, at any time—through *any* device. These core objectives dovetail with a host of marketplace initiatives that are occurring today in the absence of regulation. Indeed, an emerging array of devices—such as Roku, Microsoft's Xbox 360, and Apple's iPad and iPod, among many others—enable consumers to access a wide range of content through devices available at retail, including subscription video programming, video-on-demand ("VOD"), and other online content.[4] This ongoing innovation fuels and facilitates TWC's strategy of enabling the delivery of cable programming to any consumer device.

Although TWC supports reliance on market-based solutions to ensure consumer choice in connection with navigation devices,[5] it has also participated in and led cable industry initiatives

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[4] TWC expects that the Commission will develop a substantial record on the development and growth of these devices and services in response to the companion NOI.

[5] *See, e.g.*, Comments of Time Warner Cable Inc.—NBP Public Notice #27, GN Docket No. 09-47 *et al.*, at 2 (filed Dec. 21, 2009) ("TWC Device Innovation Comments").

to promote that goal pursuant to Section 629 and Commission mandates.[6] In particular, as the Commission has repeatedly acknowledged, TWC and other cable operators have devoted substantial resources over several years to develop specifications, interfaces, and a separate-security element (*i.e.*, CableCARDs) for both unidirectional digital cable products ("UDCPs") and tru2way devices—without any assurance that manufacturers would build such products, retailers would market them, or consumers would demand them.[7] Consistent with its general commitment to informing consumers about their service choices, TWC also provides extensive information about CableCARDs through its website and other means.[8] In addition, TWC and other cable operators voluntarily developed the tuning adapter—again at significant expense—to benefit consumers with CableCARD-equipped UDCPs by enabling them to view switched digital video ("SDV") programming in addition to the traditional one-way services those devices were designed to receive.[9] This ongoing commitment to commercial availability distinguishes cable operators from all other multichannel video programming distributors ("MVPDs"), who,

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6 *See, e.g.*, Comments of Time Warner Cable Inc., CS Docket No. 97-80, PP Docket No. 00-67, at 4-6 (filed Aug. 24, 2007) ("TWC Plug and Play Comments") (describing TWC's leadership in other industry initiatives).

7 *See, e.g.*, NPRM ¶ 12 (observing that the "cable and consumer electronics industries have invested heavily in [CableCARD] technology as both a unidirectional and bidirectional solution"); *id.* ¶ 10 (noting the cable and consumer electronics industries' agreement for bidirectional compatibility, which "continues to rely and build on CableCARDs"); *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd 6794 ¶ 36 (2005) ("*2005 Deferral Order*") (referencing "the significant efforts by the cable and consumer electronics industries since 1998" to promote commercial availability); *see also* Letter to Julius Genachowski, Chairman, FCC, from Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association, GN Docket Nos. 09-47 *et al.*, at 1-2 (filed Mar. 12, 2010) (proposing consumer-centric principles to guide the deployment of video device options).

8 *See, e.g.*, http://www.timewarnercable.com/Northeast/support/policies/cablecard.html.

9 *See infra* at 6-7.

with the Commission's express or tacit endorsement, have not undertaken any comparable initiatives.

Despite these efforts, there is no dispute that a retail market for CableCARD-equipped devices has not flourished. But as TWC has explained, this is neither surprising nor reflective of any reluctance by cable operators to support the CableCARD-based competitive retail platforms in which they have invested so heavily.[10] In fact, TWC has explained that it would benefit if consumers purchased navigation devices at retail.[11] TWC's interest in that regard, however, has thus far been insufficient to overcome the strong consumer preference for leasing set-top boxes. Among other benefits, equipment leases are available at regulated, cost-based monthly rates rather than substantial up-front retail prices; they protect consumers from the risks that a device will malfunction or become obsolete; and they permit greater movement among MVPDs because they eliminate the need to abandon a device purchased at significant expense. Thus, it should be no surprise that all major MVPDs have adopted the lease model,[12] or that almost all manufacturers have stopped making CableCARD-compatible devices.[13] Meanwhile, consumers increasingly have moved to competitive, non-cable options that do not use CableCARDs at all. Under these circumstances, it is no wonder that consumer interest in this technology waned. Out

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10 TWC Device Innovation Comments at 5.

11 *Id.* (explaining that leasing devices forces TWC to (a) tie up considerable capital in maintaining a sufficient inventory of set-top boxes, (b) bear the risks that a device will malfunction or become obsolete, and (c) charge cost-based regulated rates (in areas not subject to effective competition) that generate more modest returns than TWC expects to earn through the provision of its core services).

12 *See, e.g.*, TWC Plug and Play Comments at 13-15.

13 *See, e.g.*, NPRM ¶ 8 (stating that "most manufacturers have abandoned the technology").

of its entire customer base, TWC currently has less than 49,000 unique CableCARD customers and just short of 68,000 CableCARDs activated in retail devices.[14]

These facts underscore the validity of the Commission's observation that "CableCARD is an aging technology with certain limitations" and its resulting tentative conclusion that "CableCARD is not a viable long-term solution."[15] Nevertheless, TWC supports the Commission's goal of identifying workable interim measures that will address demonstrable problems in a cost-effective manner. Like other cable operators, TWC has every reason to ensure that all of its subscribers—including those who use CableCARD-equipped devices purchased at retail—are satisfied with their service experience, and any departure from that commitment risks severing the customer relationship entirely. At the same time, the Commission cannot consider the anticipated benefits of any proposed rule changes in a vacuum; rather, it must carefully examine the potential costs as well.

As the Commission considers both the proposals at issue in the NPRM and the longer-term reforms explored in the NOI, it should bear in mind the cautionary lessons of the CableCARD experience. As TWC has long advised, a regulatory solution focused solely on cable operators cannot succeed in the competitive MVPD marketplace, because consumers will not invest in a costly device that is compatible only with one platform.[16] Limiting regulatory

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14 These figures, which will be set forth in TWC's next CableCARD status report, represent slight increases from the figures TWC previously reported. *See* Time Warner Cable FCC CableCARD Status Report at 1, attached to Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, CS Docket No. 97-80 (filed Mar. 31, 2010) ("TWC CableCARD Status Report").

15 NPRM ¶ 12.

16 *See* TWC Plug and Play Comments at 10-16.

obligations to cable operators also would be arbitrary and capricious.[17] Of equal significance, the inherent advantages of the regulated lease model underscore the limits of the Commission's ability to engineer the development of a viable retail marketplace for set-top boxes. As the Commission continues its efforts to promote the goals set forth in Section 629, it should avoid overly restrictive measures that ignore these realities.

DISCUSSION

As discussed below, the Commission should refrain from imposing new mandates that would impose unwarranted costs, but it should adopt the proposals set forth in the NPRM to the extent they would enhance cable operators' flexibility to meet consumers' needs.

1. The Commission Need Not and Should Not Take Further Action to Replace Tuning Adapters.

The NPRM poses a series of questions concerning the efficacy of tuning adapters and asks what further Commission action might be appropriate in this context.[18] TWC urges the Commission not to "fix" something that manifestly is not broken, but rather has been a resounding success.

The NPRM notes that the tuning adapter was the product of "[p]rivate industry negotiations,"[19] but some additional context is necessary to appreciate the circumstances of its development. TWC and other cable operators voluntarily developed the tuning adapter, in cooperation with TiVo and without further action from the Commission, to benefit consumers

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17 *Id.* at 15 (citing *Burlington N. & Santa Fe Ry. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005) ("Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.")).

18 NPRM ¶ 14.

19 *Id.*

with certain CableCARD-equipped UDCPs by enabling them to view programming delivered through two-way, SDV technology without any need to lease a set-top box. SDV is a two-way service that permits cable operators to deliver only those channels that a subscriber requests, in contrast to the traditional, broadcast-type technology by which all programming is delivered in a one-way linear format, whether subscribers are watching it or not. As the Commission has recognized, SDV frees up capacity and thereby provides important benefits to consumers, including increased broadband capabilities and expanded programming offerings.[20] Programming delivered using SDV technology generally cannot be accessed on one-way devices such as CableCARD-equipped UDCPs without the use of a leased set-top box. When attached to a CableCARD-equipped UDCP, the tuning adapter (a smaller external device that need not be accessed with a remote control) provides customers with an alternative means of viewing such programming without an additional set-top box.[21] TWC has devoted substantial time, energy, and resources to this initiative, despite the fact that customers with TiVo devices and other compatible UDCPs represent only a small fraction of its subscriber base: As noted, of TWC's more than 13 million video subscribers, only about 49,000 rely on UDCPs, and only a portion of those use TiVos.

The tuning adapter solution has been fully deployed and enthusiastically embraced by eligible consumers, eliminating any need for the Commission to intervene.[22] TWC has now made tuning adapters available to eligible customers who want them in each division where it has deployed SDV technology, and has offered them *at no charge* to subscribers who rely on

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20 *See Oceanic Time Warner Cable, a Subsidiary of Time Warner Cable Inc.*, Order, 24 FCC Rcd 8716 ¶ 13 (2009).

21 *Id.* ¶ 2; *see also* NPRM ¶ 14.

22 *See* NPRM ¶ 14.

compatible one-way CableCARD devices (even though tuning adapters cost TWC $125 each). While the distribution of tuning adapters requires a significant undertaking, TWC has met that challenge as well.[23] In addition, consistent with its general commitment to educate its subscribers about their service options, TWC communicates with consumers through several means concerning the availability and functionality of tuning adapters. For example, TWC posts substantial information about tuning adapters on its website, including explanations of what a tuning adapter is, why and when it may be necessary, and how it can be connected to a CableCARD-equipped UDCP.[24] TWC's website also contains a simple interface through which consumers can order a tuning adapter.[25] And TWC provides direct mailings to consumers who use CableCARD-equipped UDCPs to ensure that they are advised about the availability of tuning adapters.

In TWC's experience, consumer feedback has been overwhelmingly positive. As of May 2010, TWC had deployed over 16,000 tuning adapters. That significant penetration attests to the efforts that TWC has undertaken to make customers aware of the tuning adapter offer and to ensure that the devices are available.

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[23] *See* Letter to Kris Monteith, Chief, Enforcement Bureau, FCC, from Matthew A. Brill, Counsel to Time Warner Cable Inc., File No. EB-07-SE-352 (filed Mar. 6, 2009) (explaining that in order to distribute tuning adapters, TWC must (a) ascertain the likely demand for tuning adapters in each area where SDV technology has been deployed and place orders with the manufacturer at least eight weeks before distribution can commence, (b) test the tuning adapter in each cable system, to ensure compatibility with the particular headend equipment and software in use, and (c) train its personnel so they will be prepared to address any questions relating to installation and technical support).

[24] http://www.timewarnercable.com/northeast/site.faqs/DigitalCab/SwitchedDi/What-is-a-Tuning-Adapter.

[25] http://www.timewarnercable.com/northeast/site.faqs/DigitalCab/SwitchedDi/How-do-I-get-a-Tuning-Adapter.

Based on this substantial success (and the significant effort and expense that led to it)—and in light of the Commission's intent to phase out reliance on CableCARDs altogether—it would make no sense even to consider mandating an alternative to the tuning adapter. Yet just as the tuning adapter has been made available and embraced by consumers, TiVo has proposed an "alternative solution"[26]—just six months after endorsing the tuning adapter as a "reasonable, practical solution,"[27] and despite its active role in the tuning adapter's development. TiVo's latest proposal would require cable operators to support an entirely new arrangement, by which each TiVo would use an Internet Protocol ("IP") pathway to signal cable headend equipment to deliver switched programming; according to TiVo, this would eliminate any need for the tuning adapter that it asked the cable industry to spend millions of dollars to develop.[28]

While there is no demonstrated need for any alternative to the tuning adapter, the one proposed by TiVo is an especially bad idea. For instance, it would cost TWC a considerable sum to deploy servers in headends nationwide to translate IP signals into a format compatible with TWC's cable systems.[29] Further, under TiVo's proposal, cable operators apparently would be required to undertake this deployment in *all* of their cable systems, even where no subscribers served by those headends are using CableCARD-equipped UDCPs capable of using this IP return path. While the number of UDCP consumers for whom these investments are relevant is small in any event, several factors further winnow down the number of subscribers who might

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26 NPRM ¶ 14.

27 Petition for Reconsideration or Clarification of TiVo Inc., File Nos. EB-07-SE-351, EB-07-SE-352, at 17-18 (filed July 27, 2009).

28 NPRM ¶ 14.

29 *See* Federal Communications Commission, *Connecting America: A National Broadband Plan for Our Future* at 55 n.129 (rel. Mar. 26, 2010) ("Cable head ends with SDV would need to install a server that translates between standard IP signals from the retail CableCARD device and the operator's proprietary network.").

potentially benefit from them. In particular, UDCP customers could not use this option if they do not subscribe to a broadband Internet access service or if their device does not include an IP output. In addition, this approach may not even succeed in delivering SDV programming effectively. TiVo's proposed solution would rely on best-efforts Internet transmission with multiple links required between the subscriber and the SDV equipment. As a result, a subscriber might well experience delays and frustration in attempting to tune to SDV programming. In contrast, the tuning adapter uses the same signaling path as TWC's leased set-top boxes and delivers a reliable and proven customer experience.

Finally, TiVo's own description of this IP return path proposal makes clear that its goal goes beyond finding another way to provide access to SDV programming. Rather, TiVo's stated intent is to require cable operators to undertake technological modifications to their networks that would allow TiVo devices to access other two-way services, such as video-on-demand, Internet content, and recorded content.[30] Given these broad goals, TiVo's proposal is best addressed, if at all, in the Commission's companion NOI proceeding,[31] rather than in this narrow rulemaking. But to the extent the Commission considers whether to adopt a new mandate at this time, all of these considerations render TiVo's proposal patently unreasonable, even apart from the prospect of making substantial investments immediately before transitioning to an entirely different method of promoting commercial availability.

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30 *See, e.g.*, Letter from Matt Zinn, Senior Vice President, General Counsel, Secretary, and Chief Privacy Officer, TiVo Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-47 *et al.*, at 1 (filed Feb. 17, 2010) (seeking "assurances" embodied "in regulations" that, among other things, "competitive retail devices are provided with access to guide metadata to enable consumers to access cable content, on-demand content, Internet content, recorded content, and more, in a single device with a single, unified user interface").

31 NOI ¶ 45.

There is no basis for abandoning a UDCP solution that has been fully implemented in favor of a new one that would benefit fewer customers while imposing greater costs. Rather than entertain such proposals, the Commission should focus on addressing demonstrated obstacles to the availability of navigation devices without creating regulatory burdens that far outweigh any purported benefits.

2. The Commission Should Preserve Cable Operators' Flexibility To Determine How Best To Manage CableCARD Installations.

The NPRM proposes that cable operators be required to permit self-installation of CableCARDs, at least where self-installation of leased set-top boxes is permitted.[32] In support of this proposal, the NPRM refers to alleged "complications" with professional installations—positing that this "poor performance" may be due to "an indifference or a reluctance by cable operators" to support navigation devices other than those they lease—and further theorizes that consumers have been discouraged from purchasing navigation devices at retail as a result.[33]

As discussed above, TWC is committed to satisfying the needs of its subscribers who use retail CableCARD devices, and it agrees that such customers should not experience unwarranted provisioning hurdles. To that end, TWC does not necessarily oppose self-installation. But TWC submits that cable operators are in the best position to determine which installation procedures will best serve their customers.

Indeed, the NPRM's analysis of the issue is premised on a series of unsupported and incorrect assertions. First, there is simply no merit to the suggestion that cable operators' installation policies are driven by an anti-competitive agenda to undermine the use of retail navigation devices, nor are there any facts supporting that suggestion. As described above, TWC

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32 NPRM ¶ 16.

33 *Id.* ¶ 9.

and other cable operators have invested considerable time and money in developing CableCARDs and supporting comparable initiatives to promote commercial availability; it would be nonsensical for them to negate that effort by intentionally frustrating their subscribers' ability to use these devices.

Nor is there any evidence to support the assertion that CableCARD installations are beset by problems originating from cable operators. For instance, TWC believes that its professional installations generally proceed smoothly and with minimal expense to the consumer—TWC's professional installations, on average, require a single truck roll and cost about $26.[34] In addition, where complications arise, they are generally outside of TWC's control and are often attributable to technical issues relating to the retail device itself—for example, the device may have incorrect software or firmware, requiring a solution from the manufacturer.[35] As a result, cable operators cannot be held solely responsible for any shortcomings in self-installations, as equipment manufacturers play an essential role in that process.

The likelihood of such complications explains why TWC opposes any mandate to permit self-installations.[36] TWC and other operators may determine in some circumstances that the benefits of self-installation outweigh the potential harms, but TWC's experience shows that self-installations can create substantial frustration from the consumer's perspective. Often through no fault of their own, consumers may not have the requisite level of technical expertise to install a CableCARD in their retail devices and to navigate through the required settings, or the manufacturer may not provide instructions for doing so. As a result, TWC frequently must

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[34] TWC CableCARD Status Report at 1.

[35] *Id.* at 1-2.

[36] NPRM ¶ 16 (asking "why many operators require professional CableCARD installation").

expend more resources to assist a customer's self-installation than if TWC had installed the CableCARD in the first place. In particular, self-installations often prompt consumers to make repeated calls to customer service representatives—and a truck roll also may be required after all. These experiences indicate that, despite the NPRM's suggestion that self-installations are generally less expensive and burdensome than those performed by a cable operator, the opposite is frequently true.

The NPRM speculates that such experiences have discouraged consumers from purchasing navigation devices at retail.[37] Putting aside the issue of who is to blame, the basis for this claim is unclear. As discussed above, there are a number of other—and quite understandable—reasons why consumers generally have not shown interest in purchasing CableCARD devices, and there is no clear evidence that installation issues are among them.

In short, TWC believes that cable operators should retain flexibility to determine what installation options make the most sense for their subscribers, and that professional installations likely will promote commercial availability rather than hamper it. Nevertheless, TWC continually evaluates its installation procedures and will introduce self-installation options if trials show that they successfully meet subscribers' needs.

3. The Commission Should Not Mandate Itemization of CableCARD Charges, and at a Minimum Should Afford Cable Operators Discretion in How They Provide Such Information.

The NPRM proposes new rules mandating that cable operators charge "equivalent and transparent prices" for CableCARDs (whether in a leased or purchased device).[38] TWC supports the Commission's continued interest in ensuring that consumers are equipped to make informed decisions about their service and device options. Indeed, TWC already utilizes various means to

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37 NPRM ¶ 9.

38 *Id.* ¶ 15.

communicate with its customers regarding all aspects of their services—practices that it has documented in other Commission proceedings and that it continually refines based on consumer feedback.[39] Accordingly, TWC has explained that the Commission should address any concerns about transparency by collaborating with the industry to develop best practices, which will preserve the flexibility service providers need to determine the most effective means of disclosing information to consumers.[40]

Nevertheless, if the Commission is inclined to adopt specific rules regarding CableCARD billing practices, there are several practical impediments that militate against any rigid requirements. First, while it is a straightforward matter to identify the price for the lease of a stand-alone CableCARD to be used with a UDCP, isolating the imputed charge for a CableCARD used in conjunction with a leased set-top box is far more challenging—and potentially misleading to consumers.[41] Further, because customer bills already set forth substantial information in a very limited space, the addition of any new itemized charge also would require expensive revisions to the billing format and may displace other important information. While TWC and others devote substantial resources to disclosing relevant charges, any new line item should be considered in light of its potential benefits. And in this respect, TWC questions whether estimating the imputed charge for a CableCARD used in conjunction

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[39] *See generally, e.g.*, Comments of Time Warner Cable Inc., CG Docket No. 08-158 *et al.* (filed Oct. 13, 2008).

[40] *Id.* at 14.

[41] For instance, when a cable operator pays a manufacturer a bundled rate for set-top boxes with pre-installed CableCARDs—as TWC often does—it no more pays manufacturers a separate price for a CableCARD than it pays a distinct fee for the various other features and functions associated with the device. Moreover, the useful lives of stand-alone CableCARDs leased for use with UDCPs, on the one hand, and CableCARDs bundled with set-top box leases, on the other, are different and thus result in varying depreciation schedules. In light of these and other factors, expressing a "transparent" price for a CableCARD is more complex than the NPRM envisions.

with a leased navigation device would benefit consumers at all, as such a figure seems unlikely to inform a consumer's choice of leasing or purchasing a navigation device. If anything, the sudden appearance of this separate line item would be confusing, as it would suggest that consumers are now incurring a new charge, when in actuality the operator would merely identify the estimated portion of the monthly lease fee that is attributable to the CableCARD.

If the Commission decides that cable operators nevertheless should be required to disclose CableCARD "prices" (*i.e.*, the estimated imputed cost, in the case of CableCARDs purchased in conjunction with navigation devices), TWC urges it to avoid prescribing a specific method by which they must do so. Cable operators should retain flexibility to provide such information in any clear and non-misleading manner. For example, to avoid suggesting that the cost of a CableCARD is imposed *in addition to* the overall equipment lease rate, a cable operator might include the imputed cost information in the materials it provides to customers upon installation and through other means about its billing practices, rather than including it among line items that are imposed on top of monthly service charges. Such an approach would permit the operator to explain the cost estimate without misleading customers about the prices they actually pay or forcing the considerable expense of revising the fields used for line items. For instance, cable operators could provide such information in their Welcome Kit materials and on their websites.[42] Particularly if the disclosure proposals are intended to apply in the short-term only, the Commission should avoid more onerous requirements that soon may be outdated and unnecessary.

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[42] TWC's website includes an extensive list of "Frequently Asked Questions" concerning CableCARDs, one of which is: "How much will I be charged to use a CableCARD?" That page then directs the consumer to further resources concerning pricing. *See* "All Digital Cable FAQs," http://www.timewarnercable.com/northeast/site.faqs/DigitalCab/#CableCARD.

4. The Commission Should Exempt All Cable Operators From the Integration Ban for Low-Cost Digital Devices.

In contrast to the above-described proposals to impose new mandates during the transition away from CableCARDs, the NPRM appropriately proposes to modify the Commission's rules to permit cable operators to make available new digital, one-way navigation devices—digital terminal adapters ("DTAs")—that combine conditional access and other functions, notwithstanding the integration ban.[43] Such devices provide consumers with a low-cost means of accessing digital content, and high-definition ("HD") DTAs permit them to access one-way HD content without any need to rely on more expensive alternatives. While the Commission has granted individual waivers of the integration ban in connection with standard-definition ("SD") DTAs,[44] the NPRM's proposal would expand such relief to all SD and HD DTAs that do not perform recording functions.

As the Commission has acknowledged, such relief increases cable operators' economic incentives to transition to all-digital systems.[45] That transition, in turn, yields a range of recognized important benefits, including increased broadband capabilities and improved programming options.[46] For these reasons, TWC urges the Commission to make this relief available to *all* cable operators regardless of their size, rather than limit it to smaller operators—

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[43] NPRM ¶ 22.

[44] *See, e.g.*, *id.* (stating that the Media Bureau "has acted on hundreds of requests for waiver of the integration ban rule"); *Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, 24 FCC Rcd 7890 (2009).

[45] NPRM ¶ 22; *see also, e.g.*, *2005 Deferral Order* ¶ 37 ("The availability of low-cost boxes will further the cable industry's migration to all-digital networks, thereby freeing up spectrum and increasing service offerings such as high-definition television.").

[46] NPRM ¶ 22.

i.e., those with activated channel capacity of 550 MHz or less.[47] There is no basis for limiting the benefits of the digital transition to customers of low-capacity cable systems; to the contrary, subscribers served by larger systems are just as deserving of faster broadband speeds and increased programming diversity. Indeed, such low-capacity systems account for only about 8 percent of all cable systems, and an even lower proportion of all cable subscribers. Further, such relief would not undermine cable operators' support for CableCARDs (indeed, it would not impact that support at all) and thus would not adversely affect the retail market for CableCARD-compatible devices.[48] Instead, an industry-wide exemption would generate economies of scale that would in turn result in lower costs for all subscribers, thereby bolstering their ability to purchase retail devices.

5. The Commission Should Afford Cable Operators Flexibility With Respect to Required Interfaces.

Finally, TWC strongly supports the proposal to eliminate the widely discredited mandate that cable operators include the IEEE 1394 interface in HD set-top boxes. As the NPRM proposes, the Commission should adopt a more flexible rule that would afford cable operators a choice among several interfaces; that flexibility would allow the industry to coalesce around the most effective interface, which in turn could lead to the emergence of a single standard that is optimal for all interested parties.[49] As various parties have explained in their petitions to waive the current requirement, the IEEE 1394 interface has become outmoded, as the industry has generally moved toward IP interfaces; the same parties also note the wasteful expense required to include this interface. The NPRM notes that these waiver requests have presented "compelling

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47 *Id.*

48 *Id.*

49 *Id.* ¶ 20.

cases" that IP connectivity will provide consumers with the functionality (such as home networking) that the IEEE 1394 interface was intended to provide.[50] Rather than grant a series of company-specific waivers, the Commission should modify its rules to provide such relief across the board. Whatever approach the Commission takes, it should act without delay to eliminate the requirement to include IEEE 1394 interfaces, as each day this mandate remains in effect imposes substantial and unjustifiable costs on cable subscribers.

More generally, experience has proven that the Commission will better serve the goals of Section 629 by permitting flexibility rather than prescribing specific technical requirements. Indeed, the IEEE 1394 example itself illustrates the difficulty in trying to predict which technological solutions might gain acceptance in the marketplace. Moreover, the NPRM's proposed approach of allowing greater flexibility would be truer to Congress's objectives. In enacting Section 629, Congress emphasized its "inten[t] that the Commission avoid actions which could have the effect of freezing or chilling the development of new technologies and services"[51]—a directive that the Commission has acknowledged must guide its implementation.[52] That principle should continue to guide the Commission as it considers further action to promote commercial availability.

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50 *Id.* ¶ 19.

51 *See* Telecommunications Act of 1996, Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. 104-230, 104th Cong., 2d Sess., at 181 (1996).

52 *See Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775 ¶ 16 (1998) (quoting this portion of the legislative history and stating, "Our objective thus is to ensure that the goals of Section 629 are met without fixing into law the current state of technology.").

CONCLUSION

TWC appreciates the Commission's interest in addressing lingering issues that may exist with respect to CableCARDs and in taking targeted action as needed to correct demonstrated problems. TWC hopes that the Commission takes a similar, fact-based approach as it begins to consider commercial availability more broadly in the companion NOI. As a leader in the effort to ensure commercial availability of navigation devices, TWC looks forward to working cooperatively with the Commission to address these short-term and long-term inquiries.

Respectfully submitted,

/s/ Matthew A. Brill

Matthew A. Brill
Brian W. Murray
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004

Steven N. Teplitz
Cristina Pauzé
TIME WARNER CABLE INC.
901 F Street, N.W., Suite 800
Washington, D.C. 20004

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