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 CABLE ONE, INC.

Cable One, Inc. ("Cable One"), by its attorneys, submits its comments in response to the Commission's Fourth Further Notice of Proposed Rulemaking ("*Fourth Notice*") in the above-captioned dockets.[1] As explained more fully below, adoption of the Commission's proposal to allow all cable operators to more broadly deploy integrated, one-way, HD-capable navigation devices ("HD-ADDs") would serve the public interest by promoting the objectives established by the Commission in connection with the digital television transition and the National Broadband Plan without harming the eventual accomplishment of the goals of Section 629 of the Communications Act. In addition, to ensure that HD-ADDs are affordable to consumers, the Commission should exempt such one-way devices from any requirement to include an IEEE 1394 or similar interface that provides home networking functionality.

[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. April 21, 2010 ("*Fourth Notice*").

I. INTRODUCTION

Cable One operates cable television systems in nineteen states, primarily in the southern, midwestern, and western portions of the country. Cable One's systems, which typically are located in smaller, mostly rural communities, serve a total of approximately 700,000 basic video customers (representing less than one percent of the nation's multichannel video programming distributor ("MVPD") households). The average Cable One franchise area has fewer than 2,000 subscribers and the average system size is around 17,000 subscribers. With a company-wide penetration level of around 51 percent, Cable One more closely resembles the 1,000 smaller, independent cable operators in the country than the larger multiple system operators.

Notwithstanding the limited size of its systems and the communities it serves, Cable One has embraced the digital revolution. For example, Cable One has introduced high-speed Internet service in virtually all of its systems and also makes available digital telephone service to over 90 percent of its customers. However, Cable One's ability to reclaim the additional bandwidth needed to expand its HD offerings to meet subscriber demand and to increase its Internet speeds to provide new services has been inhibited by the cost of deploying the required non-integrated set-top boxes throughout its cable systems.

It was precisely because of the limitations imposed on its ability to provide subscribers with affordable access to increased HD programming and Internet speeds that Cable One, in October 2008, filed with the Commission a petition seeking a limited waiver of the set-top box integration ban to allow the deployment of integrated, one-way, limited functionality, HD-capable devices on Cable One's system serving Dyersburg, Tennessee.[2] That waiver was granted in May 2009.[3]

The Commission granted Cable One's limited waiver request pursuant to the general waiver provisions in Sections 1.3 and 76.7 of the Commission's rules, as clarified by the *2005 Deferral Order* standard, which permitted cable operators to seek a waiver of the integration ban for "low-cost, limited capability integrated" devices because they provide substantial consumer benefits with no resultant competitive harm.[4] Although the HD-ADD proposed in Cable One's waiver request did not meet the pre-existing criteria for a low-cost, limited functionality box because it included HD functionality, the Commission concluded 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" and that there was "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."[5]

II. DISCUSSION

A. The Commission Should Modify Its Rules To Allow Cable Operators of Any Size to Deploy Integrated HD-ADDs.

1. Adopting the proposed rule change is consistent with and will facilitate the achievement of the Commission's policy objectives regarding the digital transition and the National Broadband Plan.

Noting that the Media Bureau has acted on "hundreds of requests for waiver of the integration ban rule" over the past three years, the Commission proposes to modify its rules to

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[2] *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 HD-ADD Order*").

[3] *Id*.

[4] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794 (2005) ("*2005 Deferral Order*").

[5] *Cable One HD-ADD Order* at ¶ 12.

allow operators to place into service "new, one-way navigation devices (including devices capable of processing a high definition signal) that perform both conditional access and other functions in a single integrated device but do not perform recording functions."[6] The *Fourth Notice* seeks comment on this proposal and on the Commission's finding that this "limited modification of our rules will allow operators to offer increased broadband speeds and more high definition programming without substantially affecting the retail market for CableCARD devices."[7]

Cable One whole-heartedly supports the adoption of the proposed modification to the Commission's rules to allow the deployment of integrated, one-way, HD-capable navigation devices. These are precisely the types of devices covered by the waiver granted last year to Cable One for its Dyersburg system. Because extending the benefits of that single system waiver to cable systems and their subscribers throughout the nation would help advance the objectives of the Commission with respect to the digital transition and National Broadband Plan without threatening the eventual achievement of the goals of Section 629, it is entirely appropriate for the Commission to adopt a rule establishing a generally applicable exception to the integration ban for the specified devices.

a. The Digital Transition

The digital transition came to fruition for broadcasters on June 12, 2009 when all full-power television stations were required by law to cease analog transmissions of broadcast programming and transmit exclusively in digital format. For cable operators, the digital transition has been driven largely by marketplace forces, and remains ongoing as operators provide additional and enhanced digital services in response to consumer demand. The

[6] *Fourth Notice* at ¶ 22.

[7] *Id.*

expanded deployment and utilization of digital technology has had a dramatic effect on both the television and broadband marketplaces. For the television industry in particular, the digital transition has precipitated a virtual explosion in the availability of HD programming, which has effectively triggered an arms race among multichannel video programming distributors ("MVPDs") who distinguish themselves from competitors based the amount of HD programming they provide to subscribers.[8]

Thus, the rapid acceleration in the availability of HD programming and the HD equipment required to view such programming is essentially a "game changer" for cable operators. Today, virtually every cable network is offered (or shortly will be offered) in HD[9] and virtually every new television purchased is HD-capable.[10] As noted by industry analysts, even the "[e]conomic recession has done little to change the consumer appetite for HD TVs, leading to the rapid adoption of HD services over the past several years and confirming our outlook that TV viewing in HD is on track to become a standard feature."[11] In short, the evolution of television from analog to digital HD is the most important development affecting television since the advent of color TV. In this environment, the ability of cable operators to provide HD programming is critically important to cable systems and their customers.

Unfortunately, HD programming requires significant bandwidth, making it difficult for many cable operators to accommodate the plethora of HD programming services now available.

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[8] *See, e.g.*, Todd Spangler, "Dish: We're First With 200 HD Channels," Multichannel News (Apr. 19, 2010), *available at*: http://www.multichannel.com/article/451642-Dish_We_re_First_With_200_HD_Channels.php (explaining that "[t]he marketing battle around HD 'tonnage' was kicked off by DirecTV [in 2007 when it] announced it would deliver 100 high-def channels before there were even 100 HD services available. Cable providers have struggled to match the HD channel counts of the satellite providers given historical bandwidth constraints.")

[9] Information derived from NCTA's online Cable Network Directory. *See* http://www.ncta.com/Organizations.aspx?type=orgtyp2&contentId=2907.

[10] Mari Rondeli, "Satellite HD Penetration Expected to Surge," SNL Kagan, p. 1 (Jan. 25, 2010) ("SNL Kagan").

[11] *Id*.

Moreover, the costs necessary to implement system upgrades or take other measures to reclaim capacity can be exceedingly difficult for operators to absorb. And even where cable operators have added HD programming to their channel line-ups, these programming options cannot be enjoyed by the majority of cable subscribers who lack affordable HD set-top boxes. Some of the least expensive devices on the market today that permit HD viewing have a wholesale cost of around $300, which is very expensive to cable operators who must acquire large quantities of devices to ensure sufficient availability to subscribers, and is entirely cost prohibitive to many consumers who must purchase such devices at retail prices. These obstacles must be eliminated if consumers are to be able to reap the full benefits of the digital transition.

b. The National Broadband Plan

The National Broadband Plan, released on March 16, 2010, established as its key objective the lofty goal of bringing Internet speeds of at least 100Mbs to at least 100 million U.S. households by 2020.[12] As the Commission is well aware, the "broadband availability gap is greatest in areas with low population density," and therefore a critical aspect of implementing the Commission's goal is to ensure that available resources are targeted to rural and sparsely inhabited areas where they are most needed.[13] Accordingly, much of the National Broadband Plan is devoted to addressing issues with broadband deployment and adoption in rural and other areas that have the most to gain by having access to broadband service (*e.g.*, by implementing universal service and other reforms that lower the costs of building and maintaining broadband infrastructure in areas where private investment is not economically feasible or is insufficient to ensure that broadband access is available to all households).

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[12] Federal Communications Commission, Connecting America: The National Broadband Plan Broadband Plan, p. 9 (2010) ("National Broadband Plan").

[13] *Id*. at 136.

Of course, broadband availability is not defined just in terms of the existence of broadband infrastructure; it also embodies the concept that consumers should have sufficient broadband speeds to achieve the full benefits that broadband has to offer. As the Commission has recognized, "[b]roadband networks only create value to consumers…when they are used in conjunction with broadband capable devices to deliver useful applications and content."[14] Thus, "[e]very American should have affordable access to robust broadband service, and the means and skills to subscribe if they so choose."[15] But it is only through taking steps to remedy the "digital inequality"[16] that is prevalent in rural and other disadvantaged areas that the Commission can fulfill its stated mission in the Broadband Plan "to create a high-performance America."[17]

2. The proposed exception for one-way HD-ADDs.

Given the goals of the digital transition and the National Broadband Plan and the hurdles facing cable operators in achieving those goals, it clearly will serve the public interest to change the Commission's rules to more broadly allow the deployment of integrated, one-way HD-ADDs. The proposed revision in the rules would provide economic incentives allowing more effective use of system capacity which, in turn, would allow cable operators to offer expanded HD programming options as well as increased broadband speeds and other services that are beneficial to subscribers. It also would provide subscribers with a low-cost option for viewing HD programming which, in turn, would fuel additional sales of HD television sets and help close the gap in HD deployment and HD adoption.

As HDTV ownership (currently at more than 70% of TV households) becomes nearly ubiquitous, HD viewing will continue to lag far behind absent affordable HD devices from

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[14] *Id*. at xi.

[15] *Id*. at xiv.

[16] *Id*. at 129.

[17] *Id*. at 9.

MVPDs.[18] Indeed, HD viewing stubbornly remains around 50% due to the high cost of HD-capable set-top boxes.[19] In the *2005 Deferral Order*, the Commission recognized that "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."[20] With the growth in HD television sales and the accompanying change in consumer expectations, it is only right that the Commission drop the now outdated distinction between standard definition and HD equipment.

The proposed change in the rules also would facilitate a significant enhancement of the nation's broadband infrastructure. According to the Commission, system upgrades, such as those that can be achieved by expanding digital capacity, "represent a significant improvement to the U.S. broadband infrastructure" and are of substantial benefit to consumers, particularly "consumers who value high download and upload speeds" who will benefit by having a service choice that they did not have before the upgrade.[21]

The *Fourth Notice* and the related *AllVid NOI* represent the Commission's long overdue recognition that the current CableCARD regime is not achieving the goals of Section 629 – namely, the development of a competitive retail market for navigation devices. However, there is no need for the Commission to deny consumers of services that they desperately want or need while the Commission explores the appropriate successor to the CableCARD regime. Even if the ambitious 2012 target date that the Commission has proposed for the introduction of the AllVid device can be met, the incremental rollout process that will follow means that, absent

[18] SNL Kagan at 1.

[19] *See* Brian Stelter, "Crystal Clear, Maybe Mesmerizing," *The New York Times*, May 23, 2010, *available at*: http://www.nytimes.com/2010/05/24/business/media/24def.html.

[20] *2005 Deferral Order* at ¶37.

[21] National Broadband Plan at 42.

relaxation of the integration ban, large scale AllVid deployment will come many years too late to solve the current demand for digital bandwidth and HD viewability. There is a logical need for a low-cost, one-way HD set-top box to deliver immediate and significant consumer benefits right now; the Commission need not and should not inhibit today's HD and Internet consumer needs while exploring tomorrow's wants.

3. The proposed rule change will not substantially affect the retail market for navigation devices.

The preceding discussion demonstrates that allowing cable operators to deploy one-way, integrated HD-capable devices will have a clear and immediate public benefit. Cable One also agrees with the Commission that adopting this limited modification to the integration ban would not substantially impact the retail market for CableCARD-enabled devices.

First, Cable One notes that the proposed rule change would not alter the requirement that cable operators offer CableCARDs to any subscribers that request them.[22] In addition, at least until a successor to the CableCARD regime is in place, the integration ban will still apply to all bidirectional devices and devices with recording functionality that a cable operator offers for lease or sale.[23]

Second, as observed by the Commission, consumer electronics manufacturers have shown little or not interest in developing one-way devices and consumers have shown little interest in purchasing such devices at retail prices. Thus, the Commission has correctly concluded that the CableCARD regime needs to be replaced. While protections need to be maintained for the relatively few consumers who have obtained a CableCARD-enabled device, it simply makes no sense to worry about the impact of the proposed rule change on the

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[22] *Fourth Notice* at 22.

[23] *Id.*

development of a one-way CableCARD-enabled device retail market that, as the Commission has acknowledged, is never going to develop.

Third, adoption of the proposed exception to the integration ban will open the door for new consumer electronics manufacturers to enter the U.S. market and will enhance the opportunity for cable operators to embrace the world-wide open digital video broadcast standard utilized by most navigation device manufacturers rather than be tied to the proprietary North American set-top box duopoly of Motorola and CISCO. In this regard, it is noteworthy that when Cable One solicited bids for an HD-ADD prototype for its Dyersburg system, sixteen companies responded. The increased competition that is likely to flow from broader HD-ADD deployment can only lead to reduced costs for cable operators and consumers alike.

Finally, in the *Cable One HD-ADD Order*, the Commission considered and dismissed concerns that the deployment of limited capability HD-capable integrated one-way boxes would endanger the accomplishment of the goals of Section 629.[24] As the Commission stated, "a one-way, low-cost box with HD capability is unlikely to present a significant impediment to the development of a competitive retail market for navigation devices."[25] Nothing that has occurred since suggests that the Commission was mistaken in this regard.

Nor is there any reason for the Commission to limit the new rule to cable systems with an activated capacity of 552 MHz or less. While such systems obviously face critical bandwidth shortages and thus would benefit significantly from the proposed relief, systems with more than 552 MHz are likely to already provide a greater multitude of HD programming options. Subscribers of these systems also deserve to have a low-cost option to view the ever-expanding variety of HD programming offered by their cable operator, particularly on second sets in their

[24] *Cable One HD-ADD Order* at ¶ 13.

[25] *Id*.

homes that the consumer may elect not to equip with a more expensive full-featured, two-way box.

Similarly, there is no basis to limit the relief proposed in the *Fourth Notice* to systems that commit to go "all digital." It is not uncommon for cable systems to currently offer a mix of analog and digitally transmitted services. For example, the basic tier (typically 10 to 20 channels) and expanded basic (often 50 channels or more) might be offered in analog, and all remaining services in digital. Indeed, such systems typically "simulcast" their analog services in digital, creating additional bandwidth constraints. Many systems with configurations along the lines described above might reasonably elect to convert expanded basic to digital, which would typically yield the most significant reclamation of bandwidth, while retaining an analog basic tier for budget-minded subscribers that simply want reliable quality pictures for their favorite broadcast programs and would prefer not to attach any set-top box. Cable operators should be afforded maximum flexibility to address such situations, while still being able to provide a low-cost viewing option for HD programming, as would result from the proposed relief for HD-ADDs.

B. HD-ADDs should be exempt from the requirement to include the IEEE 1394 or a similar interface that provides home networking functionality.

The *Fourth Notice* seeks comment on proposals for changes to its rules relating to the inclusion of the IEEE 1394 interface on high-definition set-top boxes. Currently, all HD boxes are required to include this interface pursuant to Section 76.640(b)(4)(i) of the Commission's rules.[26] However, given that the purpose behind this requirement is to enable home networking functionality in set-top boxes, Cable One submits that cable operators should not be required to include the IEEE 1394 or similar interfaces in HD-ADDs they deploy to subscribers.

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[26] 47 C.F.R. § 76.640(b)(4)(ii).

In this regard, we note that, in the *Cable One HD-ADD Order*, the Commission on its own motion waived the IEEE 1394 interface requirement, finding that "the costs to consumers of imposing the IEEE 1394 output requirement would outweigh the potential benefits."[27] While there are differing views as to the expense associated with including the interface, the Commission concluded that "regardless of the precise cost of the 1394 requirement, we believe that the additional cost would be inconsistent with the purpose of this grant, *i.e.*, to provide a low-cost HD box for consumers."[28] The Commission should provide such relief in connection with the adoption of its proposal to allow cable operators to deploy integrated HD-ADDs for the same reasons.

[27] *Cable One HD-ADD Order* at ¶ 16.

[28] *Id.* at n. 42.

III. CONCLUSION

Given the numerous pro-consumer and pro-competitive benefits outlined above, it is clear that adoption of the proposed rule changes would serve the public interest and that retaining the current waiver-based approach that forces cable operators to seek relief on a case-by-case basis is time consuming and wasteful of the resources of both the Commission and the cable operator. Absent the broader deployment of low cost, one-way HD-ADDs, many subscribers will be limited in the quality of video programming and Internet services they will be able to receive, and will have to watch as the network enhancements made possible by expanding system capacity remain outside their grasp. The Commission should promptly complete this rulemaking and adopt the proposed rules as discussed herein.

Respectfully submitted,

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