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	)	

REPLY COMMENTS OF BEYOND BROADBAND TECHNOLOGY, LLC

Beyond Broadband Technology, LLC ("BBT") hereby submits the following reply comments in response to the comments filed regarding the Fourth Further Notice of Proposed Rulemaking ("*FNPRM*") in the above-captioned proceedings.[1]

DISCUSSION

Strikingly, the initial comments filed in this proceeding indicate that there is widespread agreement that the development of a retail market for non-integrated cable set-top boxes based on the CableCARD model has been unsuccessful. While there may be differences of opinion among the various interests as to why that is the case, the fact is

[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) ("*FNPRM*"). *See also 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, CS Docket No. 97-80, PP Docket No. 00-67 (rel. April 21, 2010) ("*AllVid NOI*").

that virtually none of the commenters see CableCARDs as a long-term solution to the objective of creating a vibrant retail market for MVPD navigation devices.

The Commission, of course, shares this view. Indeed, the underlying premise of the Commission's *AllVid* proposal, which is the subject of a companion notice of inquiry, is that the failure of the CableCARD approach represents the failure of separable security generally and, thus, the "successor" to the CableCARD should focus on the ability of consumers to navigate *across* video distribution platforms, even if it means consumers will still have to lease a proprietary, integrated security device from their particular provider. Naturally, if that is the case, the "successor" to the CableCARD regime will look considerably different from what Congress expected when it adopted Section 629 of the Communications Act. As BBT stated in its initial Comments on the *FNPRM*, questions relating to whether the Commission can or should give up on Congress' goal of consumers' being able to access "video and other services offered over multichannel video programming systems" without having to lease a proprietary device from their service provider should be addressed directly in the *AllVid NOI* proceeding, not indirectly through the adoption of the "interim" measures proposed in the *FNPRM.*

Nothing in the initial comments leads us to reconsider that position. The "interim" steps being proposed in this *FNPRM* for the most part cannot be adequately judged as to their efficacy in the overall Commission effort without first doing the work entailed in the *AllVid NOI.* The impact of some of those proposals, however, can be predicted, based on the reaction of manufacturers and retailers to the twists and turns that have characterized the development and enforcement of the CableCARD rules over the past decade. What

the past tells us is that the consequences of the approach that the Commission is proposing to take would generally not be consumer friendly in the long run.

It is important to understand that there is a distinction between the CableCARDs and CableCARD enabled devices on the one hand and separable security on the other. The Commission's own statements in this proceeding have virtually assured that construction of CableCARDs and CableCARD enabled devices will cease. There is simply no likelihood that any consumer electronics manufacturer will now enter the field with innovative new products for retail sale or for use by the cable industry using the CableCARD form factor. Why would they? The Commission itself, and most of the comments filed in this proceeding have clearly indicated that a "successor" is on the way. The market has effectively been ended already, regardless of any actions taken herein.

Separable security, on the other hand, remains a totally viable option with regard to the various objectives the Commission first articulated in these proceedings. Our initial comments discuss in some detail the already available *BBTSolution*™ downloadable security solution and how it represents a potentially integral part of any successor to the CableCARD regime. The Commission has teed up a discussion of the issues relating to the role, if any, separable security will play in "AllVid" approach and what changes in the CableCARD regime will best achieve the goals set out by Congress in Section 629 in the *AllVid NOI*. The point we have sought to emphasize here is that, given the intertwined nature of the *AllVid NOI* and the proposals contained in the *FNPRM*, the Commission should not move forward with latter before it has some idea of the direction it is taking in the former. To do otherwise confuses, and thereby freezes, the entire market for innovation, including downloadable security.

We do wish to briefly address again the Commission's proposal to carve out a general waiver of the integrated security ban for "low cost, limited capability" devices. As we indicated in our initial comments, the creation of such an exception would result in a far greater change in the market than is acknowledged by the *FNPRM* or by most of the commenters endorsing that proposal. Almost all of the "low cost, limited capability" HD-DTA (or as some have labeled them, HD-ADD) boxes would have to be made to operate in the proprietary environment of the two principal suppliers. Once purchased, those boxes would assure the dominance of those suppliers for years to come, a result the Commission itself, in its "Broadband Report" said it wanted to change. Just as significantly, new entrants with innovative technology would effectively be frozen out of the market by the Commission's "interim" actions.

It also should be understood that there is no significance to the proposed exception's "one-way" limitation. Even "one-way" boxes can directly or indirectly do essentially everything a two-way device can do, such as provide an electronic program guide. Moreover, the "no-DVR" restriction could easily be circumvented by the use of a "whole house" recording device or a modular DVR add-on device. And the Commission itself is exploring a new mechanism for providing a "return-path" signal over the Internet to deal with the difficulties created by "switched digital" systems. Were that approach adopted, the distinction between "one-way" and "two-way" set top boxes would be eliminated completely.

BBT fully and wholeheartedly supports industry efforts to reclaim bandwidth for use in the provision of broadband, HD, etc. To argue, however, that the only way to accomplish that reclamation is by allowing the introduction of non-compliant HD-DTA

technology is simply not accurate. The assertion that the very high cost of compliant devices necessitates the adoption of an exception allowing deployment of HD-DTAs is no longer supportable. As noted in our initial comments, compliant separable security boxes can be purchased, at volume, in the same price range and with the same or greater capabilities as non-compliant HD-DTAs.

BBT continues to believe that the Commission should put the proposed exception for HD-DTAs on hold pending resolution of the *AllVid NOI*; however, in the alternative, we support the general industry consensus that the integrated security ban be eliminated in its entirety. Eliminating the rule would at least end the currently existing confusion about what the Commission may, or may not do to only this one (cable) segment of the MVPD market. It would open the market to innovative new approaches for both high end and low end devices.

In summary, both the Commission and the industry have recognized that the CableCARD approach has not been successful in the marketplace from either a consumer or engineering perspective and the action the Commission has already taken by articulating its intention to find a "successor" technology has effectively ended any realistic possibility that a CableCARD market will now emerge. Not only will the proposals in the *FNPRM* not spur the manufacture or adoption of new CableCARD-based devices, the Commission's "half-way" HD-DTA approach will guarantee that the existing dominant set-top box manufacturers can lock up the market for the foreseeable future. It would likely do more harm than good in the long run.

CONCLUSION

After more than a decade without success, a new approach to achieving the goal Congress set out in Section 629 is needed, one that allows new technology, innovation, and entrants to emerge. That can best be accomplished not through the "interim" steps proposed in this proceeding, but rather by moving directly to a serious consideration of successor technology envisioned in the companion *AllVid NOI.*

Respectfully submitted,

BEYOND BROADBAND TECHNOLOGY, LLC

/s/ _____

William D. Bauer, CEO/CTO
Beyond Broadband Technology, LLC
1140 10th St.
Gearing, NE 69341

Stephen R. Effros
Effros Communications
PO Box 8
Clifton, VA 20124
steve@bbtsolution.com
703-631-2099

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