

**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
)	

REPLY COMMENTS OF TIME WARNER CABLE INC.

Time Warner Cable Inc. (“TWC”) respectfully submits these reply comments in the above-captioned docket.

INTRODUCTION

The opening comments reflect a broad consensus among all stakeholders—including cable operators—about the importance of promoting consumer choice in connection with navigation devices. To that end, a number of parties support the proposals in the NPRM that would enhance the flexibility of cable operators to innovate and respond to consumer demand. In particular, most commenters endorse the proposed elimination of the outmoded requirement that cable operators include the IEEE 1394 interface in high-definition (“HD”) set-top boxes¹—a requirement that has since been waived for several parties as the Commission proceeds with this rulemaking.² Other parties also support granting all cable operators an exemption from the

¹ See, e.g., Public Knowledge Comments at 16; U.S. Chamber of Commerce Comments at 3; TiVo Comments at 19.

² See *Intel Corp., Motorola, Inc., TiVo, Inc. Requests for Waiver of Section 76.640(b)(4)(ii) of the Commission’s Rules*, Memorandum Opinion and Order, CSR-8229-Z *et al.*, at ¶ 13 (Med. Bur. rel. June 18, 2010) (“While the Commission reviews the set-top box interface rule, we believe that providing the cable industry the choice to use IP for connectivity

integration ban for low-cost digital devices.³ As TWC has explained, eliminating such unnecessary mandates will better enable cable operators to meet their customers' needs.⁴

Some parties, however, urge the Commission to adopt new mandates relating to CableCARDS, either endorsing proposals that TiVo has advanced or using them as a springboard for the introduction of even more requirements.⁵ As TWC explained in its opening comments, the Commission should approach all proposals for new regulatory mandates in this context with skepticism. Indeed, the specific proposals at issue would impose significant costs on cable operators, solely to prop up what the NPRM describes as “an aging technology with certain limitations” that “is not a viable long-term solution.”⁶ Given its stated intention to phase out reliance on CableCARDS, the Commission should ensure that the burdens associated with any short-term rule changes do not outweigh the anticipated benefits.

DISCUSSION

In its opening comments, TWC explained that there is no need to adopt new rules regarding CableCARD installations or billing practices.⁷ TWC submits this reply to respond to several misleading assertions made by critics of the tuning adapter.

instead of the IEEE 1394 interface will provide cable subscribers with a new avenue for home networking of their consumer electronic devices.”).

³ See, e.g., U.S. Chamber of Commerce Comments at 3; Motorola Comments at 14-17; Cisco Comments at 1; EchoStar Comments at 1; Telecommunications Industry Association (“TIA”) Comments at 5.

⁴ TWC Comments at 1-2.

⁵ See, e.g., Public Knowledge Comments at 7 (“While a good first step, the [NPRM’s] proposed rule changes do not go far enough.”).

⁶ *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, at ¶ 12 (rel. Apr. 21, 2010) (“NPRM”).

⁷ See generally TWC Comments at 11-15.

I. TWC’S DISCLOSURES CONCERNING TUNING ADAPTERS ARE ACCURATE AND INFORMATIVE AND DO NOT UNDERCUT THE USE OF CABLECARDS

As TWC’s comments pointed out, TWC goes to great lengths to educate its subscribers regarding the availability and functionalities of CableCARD-equipped unidirectional digital cable products (“UDCPs”).⁸ Among other things, TWC has committed to providing notice to subscribers with UDCPs in advance of deploying switched digital video (“SDV”) technology,⁹ and TWC voluntarily notifies eligible subscribers of its offer to supply a tuning adapter that enables UDCPs to receive two-way switched programming.¹⁰

In support of their desire for new rules, a few parties try to give TWC’s commitment to disclosure a negative spin by claiming that, by advising consumers about SDV, TWC is somehow undermining CableCARDs. For instance, the Consumer Electronics Association (“CEA”) alleges that TWC’s direct-mail letter advising customers of the availability of tuning adapters is a veiled attempt to convince customers not to use CableCARDs.¹¹ But CEA’s criticism is simply misinformed. TWC not only commits significant resources to purchasing and distributing tuning adapters *at no charge* to subscribers, but TWC also collaborated closely with TiVo—a CEA member—in preparing the text of this letter to ensure that it appropriately appraises TiVo users of the availability of tuning adapters. Far from seeking to undercut retail navigation devices, TWC has made unparalleled efforts among MVPDs to enhance the functionality of UDCPs, enabling them to access two-way SDV services that they were not designed to receive.

⁸ *Id.* at 3, 8.

⁹ *Oceanic Time Warner Cable, a subsidiary of Time Warner Cable, Inc.*, Consent Decree, File No. EB-07-SE-352, at ¶ 11(a)(2) (Sept. 29, 2009) (“*SDV Consent Decree*”).

¹⁰ TWC Comments at 7-8.

¹¹ CEA Comments at 15-16 & App. B.

Despite TWC's outreach and collaboration in connection with tuning adapters, TiVo complains that TWC has not done enough to inform consumers about them, pointing to a programming guide available on TWC's website that does not expressly mention the availability of tuning adapters that make switched programming available to TiVo users.¹² But this allegation is misplaced. First, in focusing on only one of many ways in which TWC communicates with customers, TiVo ignores TWC's various other sources of information concerning tuning adapters—including the offer letter noted above as well as online resources. For example, TWC's website includes a series of "Frequently Asked Questions" about tuning adapters, which include descriptions of what a tuning adapter is and how it works—in addition to explaining when, where, and how customers can get one.¹³ Such communications have proven to be effective, as demonstrated by the take rate TWC has experienced thus far: As of May 2010, TWC had deployed over 16,000 tuning adapters, which represents a substantial majority of its customers who use CableCARD-equipped TiVo devices in areas where TWC has deployed SDV technology.¹⁴

¹² TiVo Comments at 10-11.

¹³ [http://www.timewarnercable.com/northeast/site.faqs/DigitalCab/#Switched+Digital+Video+\(SDV\)](http://www.timewarnercable.com/northeast/site.faqs/DigitalCab/#Switched+Digital+Video+(SDV)) (listing questions that include, among others: (1) "What is a Tuning Adapter?"; (2) "Why would I need a Tuning Adapter?"; (3) "Does the Tuning Adapter work with all models of TiVos?"; (4) "I have a CableCARD TV. How can I get a Tuning Adapter for my TV?"; and (5) "Are there any services I won't be able to get after I have the TiVo Tuning Adapter installed?"). TWC's website also includes installation instructions. See "Connecting a Tuning Adapter to your TiVo HD DVR," http://www.timewarnercable.com/MediaLibrary/1/1/FAQ/Documents/ hookup/Tivo_TuningAdapterSelfInstall.pdf.

¹⁴ TWC Comments at 8.

Second, TiVo ignores the fact that tuning adapters are relevant only to a small fraction of TWC's customer base.¹⁵ Accordingly, any suggestion that TWC or any other cable operator should address them ubiquitously in all of its customer disclosures—including those that, like the programming guide TiVo cites, are directed to its entire customer base—is unrealistic and unreasonable. TWC has relied on more targeted communications with TiVo users to avoid needless confusion.

Finally, TiVo ignores TWC's obligation to provide notice to *all* subscribers who might be unable to access SDV-delivered programming that was previously available in a one-way linear format.¹⁶ In advancing its narrow interests, TiVo appears to overlook the fact that other TWC subscribers use UDCPs that are incompatible with the tuning adapter. Thus, in arguing that TWC should refrain from disclosing that switched programming may not be available to customers who rely on UDCPs, TiVo is effectively suggesting that TWC should dispense with its Commission-mandated notice requirements in the interest of preventing TiVo subscribers from misconstruing the capabilities of TiVo devices used in conjunction with tuning adapters. But the responsibility to ensure that consumers are informed about tuning adapters is not TWC's alone; TiVo itself has an obvious interest in educating its current and potential customers about tuning adapters, as well. TiVo cannot reasonably demand—and the Commission plainly should not require—that TWC or any other cable operator serve as TiVo's marketing agent.

¹⁵ *Id.* at 7 (noting that of TWC's more than 13 million video subscribers, only about 49,000 rely on unidirectional digital cable products, and only a portion of those use TiVos); *see also* 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 June 23, 2010) (noting that TWC has 48,494 CableCARD customers).

¹⁶ *SDV Consent Decree* ¶ 11(a)(2).

II. THE COMMISSION SHOULD REJECT THE PROPOSAL TO REPLACE THE TUNING ADAPTER WITH AN IP RETURN PATH

These unfounded criticisms are part of a broader campaign by some commenters to disparage the tuning adapter and lobby for a replacement—the Internet Protocol (“IP”) return path previously proposed by TiVo.¹⁷ TWC and others have explained that the costs associated with that proposal would far outweigh any benefits; commenters who argue otherwise understate the former and overstate the latter, based on uninformed assumptions about each half of the equation.¹⁸ TiVo itself has endorsed the tuning adapter as a “reasonable, practical solution” and advises its customers that “there are no known issues with Tuning Adapter.”¹⁹ TWC’s own experience is consistent with that assessment,²⁰ where problems have arisen (as can be the case with any new technology), TWC has worked to resolve them quickly. And contrary to some descriptions, the tuning adapter is not equivalent to another set-top box in size or function; rather, it is a smaller external device that does not require a remote control and thus need not even be accessible.²¹

Given that the tuning adapter is available to address the needs of many cable subscribers who use one-way CableCARD devices, there is no reason for the Commission to consider replacing it with a new “fix” that even fewer consumers could use. For the same reasons, the

¹⁷ NPRM ¶ 14.

¹⁸ Compare, e.g., TWC Comments at 9 (stating that this proposal “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”), with Public Knowledge Comments at 20 (stating that this proposal “would only require minimal infrastructure changes by cable operators” and “is simpler and would generate fewer deployment and support issues”).

¹⁹ 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); National Cable & Telecommunications Association Comments at 40 (quoting TiVo’s website).

²⁰ TWC Comments at 9.

²¹ *Id.* at 7.

Commission should not require cable operators to reengineer or redesign the tuning adapter to meet new specifications. For example, Public Knowledge states that the tuning adapter should not require its own power supply and should be subject to a size limit.²² But the tuning adapter could not receive sufficient power through a USB port, rendering any directive to avoid an external power supply infeasible, and mandating design changes would be prohibitively expensive and unnecessary (particularly in light of the Commission's proposal to phase out such devices). Any attempt to saddle this successful voluntary solution with such onerous burdens would only deny benefits to consumers and limit the ability of cable operators to accommodate their needs.

CONCLUSION

TWC reiterates its commitment to promoting consumer choice in connection with navigation devices and its willingness to work with manufacturers to develop products that consumers want. But TWC also urges the Commission not to adopt unnecessary mandates that will only distract from those efforts by imposing unwarranted costs on cable operators.

Respectfully submitted,

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²² See Public Knowledge Comments at 18-19 n.28.