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October 1, 2010

**EX PARTE**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: **CS Docket No. 97-80, PP Docket No. 00-67**

Dear Ms. Dortch:

On October 1, 2010, Rick Chessen, Senior Vice President, Law & Regulatory Policy, National Cable & Telecommunications Association (“NCTA”), Paul Glist, with the law firm Davis Wright Tremaine, and I had a meeting with Rosemary Harold, Legal Advisor to Commissioner Robert M. McDowell, to discuss the issues raised in the above-referenced CableCARD rulemaking proceeding. The discussion focused on proposals regarding (1) the appropriate outputs (“interfaces”) to be included on high-definition set-top boxes, including on one-way HD Digital Terminal Adapters (“DTAs”); (2) requirements that might be imposed on the deployment and use of Tuning Adapters; (3) CableLabs testing and licensing requirements; and (4) pricing and billing proposals affecting cable customers who use retail navigation devices rather than an operator-supplied set-top box. Our discussions reflected the positions NCTA has taken in Comments, Reply Comments and *ex parte* filings in the CableCARD rulemaking proceeding (as summarized in the attached document).

During the meeting, Ms. Harold asked us about statements TiVo has made about complaints from consumers arising from their use of Tuning Adapters. We explained that NCTA’s Reply Comments addressed TiVo’s citations to various complaints generated from the TiVo Community and our research had found that many, if not most, of the quotes were outdated, had been edited to redact favorable statements, and that the customers had in fact successfully completed their installations.<sup>1</sup> As with any new technology, we have no doubt that consumer complaints do exist with the Tuning Adapter. However, as we have demonstrated elsewhere, in the case of the Tuning Adapter, one can also find online praise for technicians responding to Twitter calls for assistance; comments that the performance of the Tuning Adapter

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<sup>1</sup> See NCTA Reply Comments at 6-7.

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became much more stable once TiVo updated its own firmware with its 11.0h update; and even complaints about TiVo's own customer service representatives, such as the one who (wrongly) told a customer that the TiVo Premiere did not need a Tuning Adapter. Cox has provided counterpoint examples of satisfied Tuning Adapter customers.<sup>2</sup> Finally, as NCTA's filings in the above dockets showed, TiVo has said that the Tuning Adapter is a "reasonable, practical solution," with "no known issues;" the manufacturer of Moxi, another DVR that relies on the Tuning Adapter, has called the device a "success;" and a leading Windows Media Center expert found installing a Tuning Adapter with his PC "totally easy."<sup>3</sup>

Please do not hesitate to contact me should you have any questions regarding this filing.

Respectfully submitted,

**/s/ Neal M. Goldberg**

Neal M. Goldberg

Attachment

cc: Rosemary Harold

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<sup>2</sup> See Cox Comments at 9.

<sup>3</sup> See NCTA Comments, at 36-47; NCTA Reply Comments, at 23-27, and authorities cited therein.

## **CableCARD FNPRM**

**NCTA agrees with the Commission that the CableCARD approach has not fulfilled the goals of Section 629 despite the best efforts of the Commission and the CE and cable industries.**

- The CableCARD approach failed largely due to rational consumer choices. UDCPs worked only with one-way cable services, required significant up-front payments, and required the consumer to assume the risk of obsolescence.
- Instead, consumers chose to lease devices that offered VOD and other valuable services and provided them the flexibility to swap boxes when the next model was released or return boxes if they terminated service.
- We support the Commission's efforts in the AllVid NOI to examine fresh approaches to implementing Section 629 that involve all MVPDs, not just cable, and we have proposed a set of principles that can serve as a foundation for these efforts.
- In the interim, we are committed to working with the Commission on certain targeted revisions to the CableCARD rules.

**We support a number of the proposals in the CableCARD FNPRM.**

- DTAs should be exempted from the integration ban.
  - DTAs are an essential ingredient to cable operators' digital transition and the deployment of faster, higher-capacity broadband; more HD, VOD and diverse programming; and interactive services.
  - DTAs must be able to pass through HD signals. SD is not sufficient in a world where more than 110 networks (including all top-rated cable networks) are available in HD and three-quarters of consumers own HDTVs.
  - Relief should not be limited to cable systems of 552 MHz or less because higher capacity systems also need to transition to digital. Consumers are the ultimate beneficiaries of DTA relief.
  - The manufacturing volume needed to produce low-cost DTAs will not be met if the exemption is limited to the 8% of subscribers on smaller capacity systems.
- Consumers should have a self-installation option, if:
  - A cable operator allows self-installation of leased set-top boxes; and
  - A manufacturer provides adequate installation support, as Moxi and TiVo do today.
- Professional installers should be required to arrive with no fewer than the number of CableCARDs (M-Cards) requested by the customer.
- Testing for CableCARD devices should be as simple as possible.
  - Certification testing is necessary to protect consumers by assuring device interoperability and is widely utilized in the CE industry.

- CableLabs and CE manufacturers have worked together to streamline the certification process for all devices so that products can get to market as quickly as possible and manufacturers have an agreed-upon path to self-certification.
- Operators should have more flexibility in the choice of interfaces/outputs included on their HD boxes.
  - The current 1394 rule is outdated and Commission policies should accommodate marketplace developments and consumer preferences.

**The Commission should end the integration ban.**

- Cable operators have deployed over 21 million CableCARD-enabled set-top boxes, at a cost of over \$1 billion. Compared to 500,000 CableCARD retail devices, common reliance is assured. Now the rule is just adding cost for consumers.

**The Commission should not impose onerous new CableCARD requirements on cable operators, particularly in light of the Commission’s recognition that the CableCARD approach has not been successful and that the focus should shift towards new solutions that cover all MVPDs.**

- The Commission should reject TiVo’s “IP backchannel” proposal for SDV.
  - The Tuning Adapter is a practical solution to cover the very few subscribers who use UDCPs in cable systems where SDV is deployed.
  - Developing a standardized IP backchannel solution for SDV would be costly and time-consuming.
  - Moxi agrees that dedicating significant resources to this proposal is an unwarranted distraction from AllVid.
- The Commission should refrain from imposing new technical requirements on HD set-top box interfaces.
  - Operators are working to deliver content over home networks to client devices, and rigid rules would chill innovation.
  - Any new rules mandating specific interfaces or functionalities may quickly become outdated. The Commission should defer to the *NOI* any consideration of rules regarding bi-directional functionality, such as remote control commands.
- The Commission should reject the CE industry’s elaborate pricing and billing proposals.
  - The CE proposals are illegal under the Cable Act, and would defeat the key objectives of the equipment aggregation statute: simplified inventory control and billing, and the deployment of new technology across a wide footprint.
  - The CE proposals would confuse consumers and skew competition. For example, adding a new charge on bills without any change in service will confuse consumers, and may make them believe (mistakenly) that there is a billing error or rate increase.
  - If the Commission seeks more transparency, then pricing information on the operator’s website, in a notice, or in a rate card would suffice.