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Via Electronic Filing

October 6, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation
CS Docket No. 97-80, PP Docket No. 00-67

Dear Ms. Dortch:

This is to notify you that on October 5, 2010, Bob Schwartz of Constantine Cannon (and counsel to CEA and CERC) and the undersigned met with Paul de Sa, Chief of the Office of Strategic Planning and Policy Analysis and Douglas Sicker, Chief Technologist, to discuss the joint CEA and CERC comments and reply comments pertaining to the above-captioned proceeding.

We expressed the joint parties' position that now is the time to finally achieve the goals of Section 629 through revised CableCARD rules. The availability of Internet-TVs increases the likelihood that implementation of a robust CableCARD regime will yield substantial benefits for consumers. We urged the Commission to adopt the rules that CEA and CERC proposed in our joint comments and reply comments. We also discussed the ease of self-installation and the need for strong enforcement for non-compliance by service providers.

Specifically, we urged that for consumers to understand that a viable market for retail CableCARD-enabled products exists, self-installation of CableCARDS should be the "default" approach. Virtually every other consumer electronic product sold at retail is capable of working once the consumer plugs it in. There is no justification for discrimination against competitively available navigation devices, because CableCARDS and CableCARD-reliant products were designed and configured for simple self-installation from the outset. For the same reason, there would be no justification for making this obligation contingent on an MVPD's practices with respect to leased boxes.

With respect to Switched Digital practices, we referred to the attached copy of the Commission's Public Education notification entitled "Compatibility of Cable TV and Digital TV Receivers – 'Plug-and-Play'," which assures the public that it should expect *all* cable

programming, other than certain “advanced cable services like video-on-demand,” to be received by Plug-and-Play retail products. We urged that it is the operator’s obligation, in adopting Switched Digital techniques to furnish this programming, to assure that such techniques, which are adopted for the financial convenience of the operator, are transparent and costless to subscribers.

With respect to a home networking standard to replace the “1394” mandate, we urged the Commission to refer to industry standards for IP communication, but that reference to the physical layer is not necessary. We reiterated the CEA-CERC position that, in the event a waiver is granted for “HD DTA” products, the waiver should not include any release from the obligation of operator-provided devices to provide such a home networking interface, and that no such purported basis appears in the record. As to any such waiver from common reliance on CableCARDS, we reiterated the CEA-CERC position that any such waiver cannot be justified unless, *inter alia*, supported by specific cost data as to the difference in cost of an HD DTA device with and without a CableCARD interface, and that no such data has been provided for the record or subjected to public comment.

We also reiterated the CEA-CERC position that, given the issues in CableCARD and product installation and support since 2004, as recognized by the Commission and the U.S. Court Of Appeals for the D.C. Circuit, the Commission should undertake aggressive enforcement against operator failures to invest in or implement the necessary infrastructure, training, and practices. We also urged the Commission to provide a place on its web site for receipt of consumer complaints that is equal in prominence to the attention given other consumer issues.

We also reviewed the importance of the Commission requiring cable operators to end economic discrimination against subscribers who use retail devices, by (1) providing an appropriate discount from “bundles” where the subscriber furnishes her own device, and (2) not imposing any connection charges on retail devices that are not imposed on leased devices. In these respects, after the meeting we furnished a copy of the CEA-CERC proposed Appendix A, as submitted with the CEA-CERC Reply Comments of June 28, 2010, which addresses each of these points in draft subsections 76.1205(b)(6) and (7), and which also reflects a change in wording to subsection (8)(c) as supplied in an ex parte filing of July 20, 2010.¹ This Appendix A, as provided after the meeting and to all other offices visited by CEA and CERC, is attached below.

¹ When the revision to subsection 8(c) was furnished with the July 20 ex parte filing, the revisions made in the Reply Comments to subsection (7), as well as to subsection (b)(2) (accepting conditions on self-installation as proposed by cable operators) were inadvertently not included. The version attached below includes all revisions subsequent to the version initially provided with the CEA and CERC June 14 Joint Comments and has been provided to all offices visited.

This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules. A copy of this letter has been delivered by e-mail to Mr. de Sa and Mr. Sicker.

Respectfully submitted,

/s/ **Julie M. Kearney**

Julie M. Kearney
Vice President, Regulatory Affairs

cc: Paul de Sa
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Lyle Elder
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Appendix A Proposed Regulations²

Amend § 76.1205 to read as follows:

§ 76.1205 CableCARD Support.

(a) Technical information concerning interface parameters that are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request in a timely manner.

(b) A multichannel video programming provider that is subject to the requirements of Section 76.1204(a)(1) must comply with the following requirements:

(1) Such provider shall not discriminate against any subscriber who attaches a navigation device obtained from a retailer, manufacturer, or other vendor that is unaffiliated with such multichannel video programming distributor by providing installation, technical support, or other customer service that is inferior in scope or quality to the service provided to subscribers who use a navigation device supplied by the provider.

(2) Such provider shall provide the means to allow subscribers to self-install and activate CableCARDS, except in case of a CableCARD-reliant device as to which neither the manufacturer nor the vendor furnishes to purchasers appropriate instructions for self-installation, but only for so long as such instructions are not furnished.

(3) Such provider shall supply CableCARDS:

(A) to a customer on request, in quantities sufficient to operate the customer's equipment; and

(B) to any retailer that sells navigation devices which accept a CableCARD, in a commercially reasonable manner, in quantities sufficient to fulfill the need for CableCARDS in navigation devices sold by the retailer;

(4) CableCARDS supplied pursuant to subsection (b)(3) shall be multistream, unless the customer or retailer requests single-stream CableCARDS.

(5) With respect to professional installations, such provider shall:

(A) ensure that the technician arrives with no fewer than the number of CableCARDS requested by the customer; and

(B) ensure that each such CableCARD is capable of functioning on the multichannel video distribution system to which it is to be connected.

² Underlined language in 76.1205(b)(2) and (6) is as revised in June 28 CEA and CERC Reply Comments. Underlined language in 76.1205(b)(8)(c) is as per revision in July 20 ex parte filing.

(6) Such provider shall separately disclose to consumers in a conspicuous manner in advertisements, web sites, and billing –

(A) any assessed fees for rental of single and additional CableCARDS; and,

(B) where such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to

(i) the rental of single and additional CableCARDS and

(ii) the rental of operator supplied navigation devices.

(7) CableCARD rental fees shall be priced uniformly by such provider without regard to the intended use in operator-supplied or consumer-owned equipment. No service fee shall be imposed on a subscriber for support of a subscriber-provided device that is not assessed on subscriber use of an operator-provided device.

(8) For any bundled offer combining service and equipment into a single fee, including any bundled offer providing a discount for the purchase of multiple services, such provider shall make such offer available without discrimination to any customer that owns a navigation device, and shall further offer such customer a discount from such offer equal to an amount not less than the monthly rental fee reasonably allocable to the lease of the operator-supplied navigation device included with that offer.

(c) For purposes of this section, “reasonably allocable” shall mean a price reasonably based on the actual cost of the equipment amortized over a period of no more than 60 months.

Add new § 76.1212 as follows:

§ 76.1212 Compatibility for Switched Digital Video Systems.

(a) By no later than September 30, 2010, and upon request thereafter, switched digital video operators shall make available in a timely manner to manufacturers of unidirectional digital cable products a standard protocol and interface parameters that permit cable subscribers with unidirectional digital cable products to access switched digital channels (“SDV Protocol”). The SDV Protocol shall be based on out-of-band communication between the unidirectional digital cable product and the switched digital video operator using Internet Protocol, and shall utilize to the extent possible voluntary industry standards and technologies subject to reasonable and nondiscriminatory licensing.

(b) By no later than January 1, 2011, a switched digital video operator shall implement a functional system using the SDV Protocol that enables subscribers with unidirectional digital cable products to request and receive all switched digital video channels to which they have subscribed.

(c) A switched digital video operator shall not discriminate in terms and conditions, including with respect to channel availability, quality, customer service, and pricing, between subscribers with unidirectional digital cable products using the SDV Protocol and subscribers with operator-supplied or bidirectional digital cable products.

Compatibility of Cable TV and Digital TV Receivers – “Plug-and-Play”

New Rules Make DTV Transition Easier

The Federal Communications Commission (FCC) has adopted rules that will help smooth the transition to digital television (DTV) for millions of Americans. The FCC’s new “plug-and-play” rules will ensure that most cable systems are compatible with DTV receivers and related consumer electronics equipment. This is crucial toward building products and developing services to help spur the digital transition.

Background

Congress has determined that current broadcast television service must eventually convert completely to digital operation. Cable television and other video media are also transitioning to digital operation. Because DTV is delivered digitally, it allows for the delivery of a signal virtually free of interference. DTV broadcasters will be able to offer television with movie-quality pictures and Dolby digital surround sound, along with a variety of other enhancements. DTV technology is more efficient than analog technology and will allow the same number of stations to broadcast using less spectrum.

The FCC’s plug-and-play rules are important to the digital transition because they will facilitate the direct connection of digital navigation devices or customer premises equipment, such as television receivers, set-top boxes, and digital recorders that are purchased from retail outlets to cable television systems.

Plug-and-Play Digital Television

A “plug-and-play” digital television is a television that you can plug directly into your cable system and receive analog and most digital cable services without the need for a set-top box. More and more cable services are being provided in digital format, and broadcast stations are in the midst of the transition from analog to an all-digital service. Currently, plug-and-play is available for most analog services over cable, but not for digital.

Benefits of Plug-and-Play

- Many consumers like the convenience (and cost savings) of receiving cable programming without the need of a set-top box. If nothing else, it’s one less remote control to keep track of!
- You will be able to take your plug-and-play set virtually anywhere in the country and know it will work on cable systems offering digital services.



- Plug-and-play will allow you to fully utilize the features and functions provided by the television set that often are disabled when connected to a cable set-top box.

Will Digital Plug-and-Play Work Like Analog?

Digital plug-and-play will not work quite like analog. For digital plug-and-play, you'll probably need to get a security card (also known as a "CableCARD™") from your local cable operator. The security card will permit you to watch scrambled programming and premium services, to which you're subscribed.

Will I Need A Set-Top Box If I Have a Plug-and-Play Set?

The first generation of plug-and-play sets will be able to receive one-way programming only, including analog basic, digital basic, and digital premium cable programming. If you want to receive certain advanced digital cable services like video-on-demand, the cable operator-enhanced program guide, or interactive data-enhanced television service, using a first generation set, you will need to use a set-top box. You may also need a set-top box to receive other cable operator-provided services, such as a personal video recorder.

Negotiations are underway between the cable and consumer electronics industries to establish standards that would permit plug-and-play sets to provide advanced two-way services as well.

Availability of Plug-and-Play Sets

Plug-and-play sets built pursuant to the new standards may be available as early as the second half of 2004. To know if you are buying a plug-and-play set, ask your retailer if the set is "digital cable ready." Manufacturers that use that label must meet certain technical standards and complete a testing and verification process.

Watching High-Definition Programming On a Plug-and-Play Set

Plug-and-play will permit you to watch digital programming, but not all sets will display full high-definition quality. To be sure, check with your retailer on whether the set displays full high-definition quality or a lower resolution. You can also ask your local cable provider if they offer HDTV programming.

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