

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Basic Service Tier Encryption)	MB Docket No. 11-169
)	
Compatibility Between Cable Systems and)	PP Docket No. 00-67
Consumer Electronics Equipment)	

**COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

November 28, 2011

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As the principal U.S. trade association of the consumer electronics and information technologies industries,¹ CEA is committed to achieving a competitive market for all electronic devices, including and especially the “navigation” devices that the Congress has instructed the FCC to *assure*, in its regulations, are sold freely and independently by manufacturers and vendors not affiliated with the service provider. Achieving this assurance requires that the Commission recognize and keep abreast of developments in the markets for both services and devices. This means that proactive, as well as reactive, measures are necessary.

This NPRM, responding to changes and potential efficiencies in the services market, is entirely reactive. If it were matched by equally proactive measures, this rule change to capture potential efficiencies, even at the cost of some inconvenience to some

¹ CEA’s more than 2,000 member companies include the world’s leading consumer electronics manufacturers. CEA’s members design, manufacture, distribute, and sell a wide range of consumer products including television receivers and monitors, computers, computer television tuner cards, digital video recorders (“DVRs”), game devices, navigation devices, music players, telephones, radios, and products that combine a variety of these features and pair them with services.

subscribers, would be unobjectionable. However, this NPRM also marks a retreat from one of the few and inadequate² ways that Sections 624A and 629 have been implemented by the Commission.³ It would entail a last and close to final abandonment of core TV reception compatibility between televisions and cable systems.⁴

Core television compatibility with cable systems is not the only matter that requires proactive rather than reactive attention from the Commission. The Commission itself has identified several issues, pertaining to MVPDs and home networking, that, if not resolved, it will have to deal with piecemeal and reactively through waiver applications for relief from rules that still do not recognize the transition to IP transmission:

- Completing the Ethernet home networking initiative begun last year (in response to waiver requests) in Docket No. 97-80.
- Achieving device competition in IPTV systems, which do not use CableCARDS and now are applying for *renewals* of limited-time waivers that were granted to give them time to accommodate competitive devices.⁵

² The Commission itself has recognized the inadequacy of measures taken to date. *See, e.g., In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Third Report and Order and Order on Reconsideration (Oct. 14, 2010) (“CableCARD Order”); *In the Matter of 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*, MB Dkt. No. 10-91, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Notice of Inquiry (rel. Apr. 21, 2010) (“AllVid NOI”).

³ 47 U.S.C. § 544a; 47 U.S.C. § 549.

⁴ The final blow will occur when cable operators move entirely to IP-based distribution, as major cable operators have said they intend to do – unless TVs are *also* equipped with a standards-based IP interface. *See* note 21, *infra*.

⁵ *See, e.g., In the Matter of Petition of Valley Communications, Inc. for Clarification or Limited Waiver of Section 76.104(a) of the Commission’s Rules*, CSR ___, CS Dkt. No. 97-80 (Sept. 8, 2011).

- Resolving the status of “Downloadable Security” as discussed in prior Orders and waiver proceedings.
- Addressing the future of CableCARD-reliant devices in light of the declared intention of cable systems to move expeditiously to IP-based distribution.
- Proceeding with an AllVid NPRM, now that a specific set of standards references has been proposed that would address all of the above pending issues, *and* would relieve the cable industry of the conditional access “integration ban.”⁶

Accordingly, CEA must oppose the action proposed in this NPRM unless it is taken in the context of additional, proactive rulemakings to address the *other* complexities and potential efficiencies that are posed by developments in the markets and technologies for digital services and devices. Otherwise, the objectives of the Congress, as spelled out in directives to the Commission in Sections 624A and 629, will move further from realization.

I. The Commission Should Focus On Home Networking Before Approving Further Measures To Degrade TV Interoperability.

If, as the Commission proposes, it is to take efficiency measures to recognize and react to the transition to all-digital transmission, it would be contrary to Section 629 to take such measures without *also* recognizing the impact on this transition, and the potential for efficiencies, for interoperability of competitive devices. In the absence of any parallel rulemaking that would do this, this NPRM is flawed and should not move to an Order.

The Commission took a limited step, but also in an isolated and reactive context, in its 2010 CableCARD Order. It updated Section 76.640, which had required the provision

⁶ As envisioned in Connecting America: The National Broadband Plan (March 16, 2010), the AllVid NOI, and the Alliance proposed regulation, MVPDs would be able to integrate conditional access in any Gateway service or device. *See, Video Device Competition*, MB Dkt. No. 10-91, *Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Dkt. No. 00-67, Ltr. from Robert S. Schwartz, AllVid Tech Company Alliance to Marlene H. Dortch, Sec. FCC (Sept. 20, 2011) (“Alliance Proposed Regulations”).

of an IEEE 1394 interface that would assure bidirectional and recordable home network access to MSOs' leased devices, with an expanded yet vague requirement:

(iii) **Effective December 1, 2012, ensure that the cable-operator-provided high definition set-top boxes, except unidirectional set-top boxes without recording functionality, shall comply with an open industry standard that provides for audiovisual communications including service discovery, video transport, and remote control command pass-through standards for home networking.**⁷

The Commission did not, in this Order, take any proactive step to assure that the “open industry standard” would be nationally interoperable with TVs. Nor did the Commission indicate whether the implementation by MSOs of several incompatible standards would be considered compliant – thus, again, leaving itself bound to regulate by waiver.

The FCC also chose, over objections by CEA and CERC, to exclude non-interactive set-top boxes from this requirement, thereby severely limiting their utility in supporting competitive devices on home networks. Again, the Commission chose short term “efficiency” over interoperability. Again, the only rationale for such neglect was the Commission’s view that the problem was of an “interim” nature and, rather than pursue an interim solution, the Commission was looking ahead to an AllVid rulemaking – in which MSOs would once again be allowed to integrate their security in Gateway

⁷ CableCARD Order at 45.

devices, and competitive devices would be supported by a nationally standard IP-based interface.⁸

II. The Commission Must Deal With IPTV and Small-MSO Support Of Competitive Devices Before Relaxing Any Interoperability Requirements.

An area in which the Commission has set clear expectations for compliance with Section 629, but has also left open how this would ever occur, is the support of competitive devices on “IPTV” systems. Because the industry has no agreed path toward compliance, operators have filed, and CEA has commented on, numerous waiver requests.⁹ Rather than address this challenge through a rule, the Commission has again regulated by waiver –

⁸ In the CableCARD proceeding the Commission noted that its Order would occur in the context of an expectation of a broader scope AllVid rulemaking, and this was one of the arguments advanced by cable MSOs against more proactive requirements. For example, to deal with “switched digital” techniques the FCC declined to implement a clearly workable “IP backchannel” solution, and resorted instead to operator-provided boxes as an interim solution. CableCARD Order ¶¶ 11-14; *cf.* AllVid NOI ¶ 3. But no AllVid NPRM has yet issued.

⁹ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CS Dkt. No. 97-80, *Bernard Telephone Company Inc.*, CSR-7886-Z, *Colo Telephone Company*, CSR-7887-Z, *Coon Creek Telephone Company and Coon Creek Telecommunications Corp.*, CSR-7888-Z, *F & B Communications, Inc.*, CSR-7889-Z, *Farmers Cooperative Telephone Company*, CSR-7890-Z, *Heart of Iowa Communications Cooperative*, CSR-7891-Z, *Kalona Cooperative Telephone Company*, CSR-7892-Z, *LaMotte Telephone Company*, CSR-7893-Z, *Local Internet Service Company*, CSR-7903-Z, *Mahaska Communication Group, LLC*, CSR-7894-Z, *Radcliffe Telephone Company, Inc.*, CSR-7895-Z, *South Slope Cooperative Telephone Company*, CSR-7896-Z, *Wellman Cooperative Telephone Association*, CSR-7897-Z, *West Liberty Telephone Company*, CSR-7898-Z, *Winnebago Cooperative Telecom Association*, CSR-7899-Z, Comments of CEA (June 4, 2008); *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. 97-80, CSR-7218-Z – CSR-7222-Z, CSR-7227-Z, Comments of the CEA on Six Requests for Waiver of 47 C.F.R. § 76.1204(a)(1) (July 5, 2007).

denying some, and granting a series of time-limited waivers,¹⁰ with *ad hoc* but baseless expectations that these systems will have found a way to comply before the waiver expires.¹¹ Predictably in the absence of any rulemaking,¹² these waivers are expiring and

¹⁰ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CS Dkt. No. 97-80, Memorandum Opinion and Order (rel. June 29, 2007); *In the Matter of Massillon Cable TV, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7229-Z, CS Dkt. No. 97-80, Memorandum Opinion and Order (rel. June 29, 2007); *In the Matter of ComSouth Telesys, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7223-Z, CS Dkt. No. 97-80 (rel. July 23, 2007).

¹¹ Possibly some systems have given up requesting waivers but have not submitted evidence of compliance. In such cases the Commission should be taking enforcement action, as it has announced that its CableCARD regulations will now be strictly enforced. See FCC Enforcement Advisory, *CableCARDS, Enforcement Bureau Advises Cable Operators to Take Affirmative Steps to Comply with New CableCARD Rules*, Aug. 8, 2011, available at <http://www.fcc.gov/document/fcc-enforcement-advisorycablecards>.

¹² CEA and others have urged the FCC to conduct a rulemaking to address this issue. *In the Matter of Electric Power Board of Chattanooga Petition for Clarification or Waiver of 47 C.F.R. § 76.1204*, CSR-8200-Z, CS Dkt. No. 97-80, Opposition of the CEA (Sept. 24, 2009); Ltr. from Jamie Hedlund, V.P. for Regulatory Affairs, CEA to Marlene Dortch, Sec., FCC re *Ex Parte* Submission in Support of Petition For Reconsideration, CSR-7902-Z, CS Dkt. No. 97-80 (Aug. 5, 2009); *In the Matter of Pace Americas, Inc.'s Request for Waiver of § 76.1204(a)(1)*, CSR-8177-Z, CSR Dkt. No. 97-80, Comments of CEA on Pace Americas, Inc.'s Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (June 29, 2009); *In the Matter of Thomson, Inc.'s Request for Waiver of § 76.1204(a)(1)*, CSR-8178-Z, Comments of CEA on Thomson, Inc.'s Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (June 29, 2009); *In the Matter of Motorola, Inc.'s Request for Waiver of § 76.1204(a)(1)*, CSR-8175-Z, Comments of CEA on Motorola, Inc.'s Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (June 26, 2009); *In the Matter of Petition of Lafayette City-Parish Consolidated Government of Lafayette, Louisiana, d/b/a Lafayette Utilities System for Waiver of Section 76.1204(a) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CSR-8152-Z, CS Docket No. 97-80, Comments of the CEA on Lafayette Utilities System Petition for Waiver (May. 14, 2009); Ltrs. from Jamie Hedlund, V.P. for Regulatory Affairs, CEA to Marlene Dortch, Sec., FCC re Notice of *ex parte* presentation in MB Dkt. No. 97-80 (Apr. 9, 2009 (two letters)); *In the Matter of Cablevision Systems Corporation's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7078-Z, *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7078-Z

the IPTV systems are starting to ask for their renewal – because no technical standard has emerged to allow them to do otherwise.¹³

Where common and interoperable standards are available, it is neither efficient nor compliant with Sections 624 and 629 for the Commission to proceed instead by waiver or by winking at noncompliance. Until the Commission takes a unified and proactive approach to compliance with these congressional directions, CEA cannot support a further relaxation of the existing regulations to implement these provisions.

III. The Commission Must Deal With “Downloadable Security” Before Relaxing Any Interoperability Requirements.

The cable industry and the Commission have also raised, deflated, and confused expectations about whether a competitive market for navigation devices could be supported by “downloadable security,” and whether various iterations would be compliant with Section 629. When the cable industry notified the Commission that CableLabs was working on an industry-wide downloadable solution, CEA responded enthusiastically but cautiously, because the feasibility of the CableLabs approach could not be discussed in public.¹⁴ Therefore CEA opposed the grant of any waiver based on any such assumption.

Comments and Reply Comments of CEA in Support of Application for Review (Feb. 17, 2009, Mar. 16, 2009).

¹³ See, e.g., *supra* note 5.

¹⁴ See, e.g., *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Ltr. From Julie M. Kearney, Sr. Dir. Regulatory Affairs, CEA to Marlene H. Dortch, Sec., FCC re *Ex parte* Communications in CS Dkt. No. 97-80 (Mar. 3, [2005]). CEA was cautious because (1) it was unclear whether “downloadable” solutions would nevertheless require unique hardware, still making it impossible to field a nationally competitive product without a CableCARD, and (2) the CableLabs project was under a strict non-disclosure agreement that did not allow those CEA members who had signed the agreement to discuss the technology publicly or even with FCC staff or Commissioners.

Nevertheless, on March 17, 2005, the Commission granted, by waiver, a further delay in “common reliance,” based explicitly on CableLabs’ and the cable industry’s representations.¹⁵ The CableLabs project was then abandoned, but the common reliance (“integration ban”) waiver remained in effect until July 1, 2007 – by which time the universe of CableCARD-reliant competitive devices had severely contracted.

Rather than hold the cable industry accountable for failing to deliver on its “downloadable” promise, the Commission has reverted here, too, to “regulation by waiver” – a practice that, as the FCC acknowledges in this notice, several parties have rightly advised it to abandon.¹⁶ The Commission issued a waiver extension until December 31, 2010 allowing implementation of such a system, but in the grant explicitly refrained from stating whether or not this system would be compliant with Section 629.¹⁷ (Despite the waiver’s expiration on December 31, 2010, no further waiver extension has been granted

¹⁵ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Second Report and Order at ¶ 3 (rel. Mar. 17, 2005). The Commission, in its Report & Order, said it would not grant any further delays. In response, the cable industry sued the Commission in the D.C. Circuit and lost. *See, Comcast Corp. v. FCC*, 526 F.3d 763 (D.C. Cir. 2008).

¹⁶ CEA has specifically complained about this practice with respect to downloadable security. *See*, Ltr. from Jamie Hedlund, V.P. for Regulatory Affairs, CEA to Marlene Dortch, Sec., FCC re *Ex Parte* Submission in Support of Petition For Reconsideration, CSR-7902-Z, CS Dkt. No. 97-80 (Aug. 5, 2009); Ltrs. from Jamie Hedlund, V.P. for Regulatory Affairs, CEA to Marlene Dortch, Sec., FCC re Notice of *ex parte* presentation in MB Dkt. No. 97-80 (Apr. 16, 2009 and three dated Apr. 9, 2009).

¹⁷ *In the Matter of Cablevision Systems Corporation’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7078-Z, *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Memorandum Opinion and Order (rel. Jan. 16, 2009).

or, apparently, sought.) The Commission addressed another system not even by waiver, but by press release.¹⁸

CEA has pointed out consistently and without refutation that every known “downloadable” proposal is, in fact, based on a requirement of a *unique chip* and that each differs from the others. Thus the entire idea that a cable encryption / authentication conditional access system could be entirely “downloadable” appears to have been a myth.¹⁹ To be interoperable with competitive devices, any security system endorsed by the Commission – downloadable or otherwise – should comply with the attributes that are currently met by existing CableCARDs, including a national interface so that a competitive product can be nationally marketed and moved by the consumer from one local system to another.²⁰ But rather than address this issue and give interim guidance to systems that are pursuing “downloadable” technologies, the Commission chose in its National Broadband Plan to look ahead – to a future of IP-based distribution in which downloadable security,

¹⁸ The FCC further muddied the waters through a last paragraph in a press release, suggesting that a unique downloadable system “may” be complaint. FCC Press Release, *Media Bureau Acts on Requests for Waiver of Rules on Integrated Set-Top Boxes and Clarifies Compliance of Downloadable Conditional Access Security Solution* (Jan. 10, 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269446A1.pdf.

¹⁹ This view has been supported by at least one expert security company that has also urged the FCC to depart from “regulation by waiver” and instead to seek a national standard. *In the Matter of Cablevision Systems Corporation’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7078-Z, *Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, NagraVision USA, Inc. Comments on Application for Review (Mar. 4, 2009).

²⁰ See, e.g., *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, CSR-7131-Z, Ltr. from Julie M. Kearney, Sr. Dir. And Regulatory Counsel, CEA to Marlene Dortch, Sec., FCC, re. Ex Parte Presentation CS Dkt. No. 97-80, CSR-7131-Z at 9-10 (Apr. 24, [2007]).

like CableCARDs, would be only “interim” solutions, because MSOs would be free to integrate security in Gateway devices. This decision is justifiable only *if* the FCC does in fact proceed with the “Gateway” solution discussed in the Broadband Plan.

IV. To Comply With Section 629 The Commission Must Deal With The Announced Transition To IP-Based Delivery And Should Not Further Degrade Device Interoperability Until It Has Proposed A Solution.

In its 2010 CableCard Notice of Proposed Rulemaking and in the limited scope of its Order, the Commission labeled CableCards an “interim” solution because, *inter alia*, it foresaw that MVPDs were moving toward IP-based distribution. MSOs have been increasingly explicit about their plans to move to all-IP delivery of their programming and services.²¹ When this occurs, the majority of MVPD subscribers will find themselves in the same position as those who now receive IPTV services or are in a “downloadable” system – the complete lack of support for retail navigation devices, due to the lack of a single standard by which retail devices can access MVPD programming. CEA cannot support a further step away from device interoperability without the Commission indicating, in an on-record proceeding that is subject to public comment, whether it intends to take forward-looking steps to ensure that there is a successor to CableCARD that

²¹ Sam Blackman, *Comcast’s IP Transcoding Strategy Signals Appeal of a New Approach*, Screenplaysmag.com, Aug. 1, 2011, available at <http://www.screenplaysmag.com/2011/08/04/comcast%E2%80%99s-ip-transcoding-strategy-signals-appeal-of-a-new-approach/>; Todd Spangler, *MSOs Deployed Only 3,000 Net New Standalone Cable-Cards in the Last Three Months*, Multichannel News, Oct. 3, 2011, available at <http://www.multichannel.com/article/474704-MSOs-Deployed-Only-3-000-Net-New-Standalone-CableCards-In-Last-Three-Mont>
[hs.php](http://www.multichannel.com/article/474704-MSOs-Deployed-Only-3-000-Net-New-Standalone-CableCards-In-Last-Three-Mont); Todd Spangler, NCTA, *CableLabs Want Set-Tops To Suck Less Power*, Multichannel News, Nov. 18, 2011, available at <http://www.multichannel.com/article/476897-NCTA-CableLabs-Want-Set-Tops-To-Suck-Less-Power.php>; Steve Donohue, *Comcast exec pushes EBIF*, FierceCable, Oct. 6, 2011, available at <http://www.fiercecable.com/story/comcasts-hess-ebif-has-limited-shelf-life/2011-10-06>.

complies with Section 629, and what it will do about all of the pending “interim” issues that have accumulated.

The Commission should not take piecemeal steps, in the name of efficiency, to dismantle the remaining elements of system interoperability until it has also framed a transition to a system that keeps pace with the new means of transmission. Congress passed Section 629 because it foresaw that, in an era of digital transmission, the industry could take fractured approaches that would not support a national device market, or it could rely on private sector standards. The Congress chose the standards-based approach.²² The move to IP-based transmission provides the Commission with another opportunity to achieve a national interface based on the work of private sector standards-setting organizations.

V. The Means Are Now At Hand, Through Standards Made By Private Sector Standards-Setting Organizations, To Address And Solve All Device Interoperability Obstacles. The FCC Should Not Take Piecemeal Actions Or Reactions Without Pursuing This Standards-Based Solution.

On September 20, 2011, the AllVid Tech Company Alliance filed with the Commission a draft regulation that, entirely through reference to standards developed or nearing final development by private sector standards-setting bodies, would address each of the challenges discussed above, and would finally reverse the tide of partial and reactive measures that obstructed the development of an open market for navigation devices.²³

Each of the issues discussed above – “a” standard for home networking; device

²² When Section 629 was passed, at least 50 percent of all cable subscribers neither needed nor wanted set-top boxes yet could rely on common broadcast standards to receive programming. The instant NPRM, if it goes forward, will move the number who can get by without operator-provided cards or equipment in their house closer to zero.

²³ See Alliance Proposed Regulations, *supra* note 6.

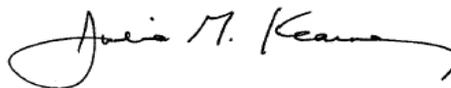
interoperability with IPTV and “downloadable” systems; and support of competitive navigation devices in the era of IP distribution – is addressed and can be resolved through reference to these standards.

CEA supports the Alliance’s proposal, but recognizes (as does the Alliance) that it raises policy issues worthy of public discussion in the context of a rulemaking. CEA believes that, in light of the very changes in transmission techniques that have triggered the instant NPRM, such a rulemaking has become an essential component to any further action by the Commission, waiver or otherwise, with respect to Sections 624 and 629.

VI. Conclusion – The FCC Should Not Treat This Issue In Isolation.

The proposal in the National Broadband Plan of “interim” and “forward looking” solutions was well-founded. If the Commission is going to continue with fixes that are only “interim,” it should proceed, as well, with a true solution. To the extent the Commission, as in this Notice, recognizes *part* of the problem posed by transitions to all-digital techniques, it should evaluate and address, for public comment, the larger context and outstanding issues pertaining to competitive availability of navigation devices, rather than reverting to regulation by waiver.

Respectfully submitted,



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