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Via Electronic Filing

March 15, 2012

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

Re: Commercial Availability of Navigation Devices, CS Docket No. 97-80;
Compatibility Between Cable Systems and Consumer Electronics Equipment, PP
Docket No. 00-67; Adams Cable Request for Waiver, CSR 8537-Z; Baja Broadband
Request for Waiver, CSR -7111-Z; In the Matter of Basic Service Tier Encryption,
Compatibility Between Cable Systems and Consumer Electronics Equipment, MB
Docket 11-169, PP Docket 00-67.

Dear Ms. Dortch:

This letter is filed in response to the *ex parte* submission made on March 8 (“Comments”) by Albert M. Carollo, Jr., Chairman of Sweetwater Cable TV Co. (“Sweetwater”), in support of the waiver request of Adams Cable Equipment, Inc. (Adams). This filing and the circumstances it cites exemplify the pitfalls of a *non-policy* of regulation-by-waiver.

Sweetwater explains that eighty percent of its subscribers are content to watch programs delivered via unencrypted clear QAM transmissions and hence to avoid using and paying for a set-top box. Sweetwater does not report any consumer discontent with the service as received and does not point to any security issue in its rural system. Sweetwater wants to move to encrypted delivery for its own business (“digital penetration”) objectives, but faces a Gordian Knot emblematic of the Commission’s failure to act in the public interest:

- **No CableCARD models of lower-end STBs.** The Commission has granted waiver after waiver in toleration of the cable industry’s decision not to procure lower-end CableCARD-reliant set-top boxes. So no CableCARD-reliant set-tops are available to Sweetwater at a price Sweetwater considers affordable.

- **Shortage of HD DTAs.** Sweetwater says it cannot rely on “DTAs” because, as also reported last week by Baja Broadband, there is suddenly a *shortage* of DTA’s.¹
- **Repeal of basic tier rule.** The DTA shortage occurs as the Commission is being urged by the heads of major MSOs to allow Basic Tier encryption *immediately*, and to solve consumers’ transition problems by offering: DTAs.²
- **Waiver of common reliance.** Baja Broadband now seeks to extend its waiver from common reliance because it finds it cannot obtain DTAs.

The Commission thus meets itself head-on: It proposes to allow basic tier encryption, but is now told by cable operators that the necessary DTAs are not available. It grants waivers from common reliance based on the purported unaffordability of CableCARD-reliant products, but is now told by NCTA that CableCARDS are *the proper and affordable solution for anyone wishing to offer* a navigation device.³

Regulation by waiver has allowed the cable industry to resist today’s solutions and to avoid tomorrow’s. CEA urges that: (1) The Adams waiver be denied, and (2) No waivers be granted or extended at this time based on the purported cost of CableCARD-reliant products, or based on any purported shortage of DTAs or HD DTAs. Instead, the Commission and its Media Bureau should fulfill the Commission’s obligation under Section 629 to adopt an affirmative, forward-looking policy to enable competition, innovation, and consumer convenience in the markets for navigation devices. An immediate and necessary step toward this end will be a requirement that operators provide full support for an open industry

¹Commercial Availability of Navigation Devices, CS Docket No. 97-80, Baja request for extension of waiver, CSR -7111-Z, Letter from Paul B. Hudson, March 9, 2012; Letter from Albert M. Carollo, Jr. re Adams Cable Request for Waiver, CSR 8537-Z, March 8, 2012.

² In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment, MB Docket 11-169, PP Docket 00-67, Letter from 14 CEOs of cable operators, filed by NCTA, March 1, 2012.

³ *See*, In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment, MB Docket 11-169, PP Docket 00-67, Letter from Neal M. Goldberg, General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, Feb. 7, 2012, at 7; Letter from Neal M. Goldberg, February 21, 2012, at 4; Letter from Neal M. Goldberg reporting conversation between CEO Michael K. Powell and Chairman Genachowski, February 28, 2012 (“... CableCARD being the FCC-approved vehicle for accessing digital cable content.”) NCTA argues that Boxee should not be entitled to consideration as to their investment in clear QAM products because Boxee has had the opportunity to build CableCARD-reliant products. Yet cable operators now seek waivers based on complaints that CableCARD-reliant navigation devices are *too expensive*.

standard as required by Section 76.640 of the Commission's regulations.⁴ This course will enable independent competition and innovation in service to consumers, rather than consigning them, and smaller operators, to relying on the shifting supply and procurement decisions of cable MSOs.

This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules.

Respectfully submitted,

/ Julie M. Kearney /

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cc:

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⁴ In the Matter of Basic Service Tier Encryption, Comments of the Consumer Electronics Association, Nov. 28, 2011.

CERTIFICATE OF SERVICE

I do hereby certify that on March 15, 2012, I caused a true and correct copy of the foregoing ex parte comment of the Consumer Electronics Association to the Adams Cable Equipment, Inc. Request For Waiver of 47 C.F.R. § 76.1204 to be served via first-class mail on the following:

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