

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

In the Matter of)	
)	
Nagra USA’s Request for Waiver of Sections)	MB Docket No. 12-242
76.1204(a)(1) and 76.640(b)(4)(ii)(A))	
of the Commission’s Rules)	CS Docket No. 97-80,
)	PP Docket No. 00-67

**COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

Nagra’s petition for relief from two of the Commission’s “navigation device” regulations is the first one that proposes moving the basic interface between operator-provided devices and consumer-sourced devices from the “conditional access” (CA) level to the Internet Protocol (IP) level. In principle this is a step that CEA¹ endorsed in both the FCC’s National Broadband Plan and the “AllVid” NOI proceeding. However, if addressed prematurely in the context of an application for waiver relief for specific products and services, the grant of such a waiver without accompanying regulatory reform would undermine rather than advance consumer sourcing of navigation devices from sources other than cable operators—the goal of Sections 624² and 629³ of the Communications Act.

¹ CEA’s more than 2,100 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.

² 47 U.S.C § 544.

³ 47 U.S.C § 549.

Nagra seeks waiver of two provisions:⁴

- 47 C.F.R. 76.640(b)(4)(ii)(A) requires cable operator-provided high definition navigation devices to render video through an HDMI or DVI video output.
- 47 C.F.R. 76.1204(a)(1) requires cable operator-provided navigation devices to rely on CableCARDS for CA functions, so as to present a nationally standard, common, and portable interface for the attachment and operation of operator-provided and consumer-sourced equipment alike.

The provision requiring HDMI outputs on set-top boxes was added in the 2003 “Plug & Play” rulemaking and this interface is now “standard equipment” on both set-top boxes and TVs. The CableCARD interface implemented to comply with Section 76.1204(a)(1), however, remains the only standard, nationally portable interface for consumer-sourced devices to receive all linear channels of all MVPD programming. CEA has urged the Commission to begin work immediately on an IP-based successor standard interface for consumer-sourced devices. CEA has opposed and will continue to oppose any waiver that would undermine CableCARD common reliance unless and until an IP-based successor interface that is nationally standard and nationally portable is referenced in FCC regulations.

I. Nagra’s Application Raises The Core Issue Of Locating The Network Interface To Competitive Products.

For programming and services provided by a cable operator within its MVPD service, FCC rules have required two avenues for supporting competitive devices pursuant to Sections 624 and 629 of the Communications Act: (1) Direct connection to receive

⁴ Nagra’s prayer for relief is for waiver or, in the alternative, clarification. *In the Matter of Nagra USA’s Request for Waiver of Sections 76.1204(a)(1) and 76.640(b)(4)(ii)(A) of the Commission’s Rules*, MB Docket No. 12-242, CS Dkt. No. 97-80, PP Dkt. No. 00-67, at 8-9 (Aug. 17, 2012).

unencrypted programming – in the digital era, “Clear QAM”; and (2) Secure rendering, storage, and home network sharing through use of an operator-provided CableCARD that affords access to all linear channels. The Commission has proposed eliminating the requirement to provide “Clear QAM.” Thus it is likely that as cable systems continue to move to digital-only systems, only direct connection by CableCARD will survive. But with the inevitable movement to IP-based distribution of MVPD programming, it is necessary for the Commission to identify a successor to the CableCARD interface.⁵

The problem with the Nagra petition is that it is too modest in the relief that it seeks. Any FCC action that would move beyond CableCARDS needs to identify and require a fully capable successor, in the new context of interactive IP distribution to IP-based home networks. In the absence of clear identification of and industry adoption and reliance on a successor interface, a grant of *only* the relief requested by Nagra would appear to undermine rather than aid competition and innovation in consumer sourced devices.

CEA is on record as supporting (1) FCC development of regulations for a “gateway” approach to common reliance in the IP era, and (2) in the gateway context, allowing MSOs to integrate CA into devices or to provide no leased devices at all, *once a standard and fully interactive IP interface to the home network has been established*.⁶

Therefore, CEA would support any Commission action to take an integrated approach in its

⁵ See *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of CEA, at 10-12 (Nov. 28, 2011) (“CEA Basic Tier Comments”).

⁶ *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, Comments of CEA/Consumer Electronics Retailers Coalition (“CERC”) on Notice of Inquiry (July 13, 2010); Reply Comments (Aug. 12, 2012).

regulations so as to move to a truly open standard IP home networking interface that all MVPD programmers must support as a successor to CableCARD.

II. Proprietary, Non-Interactive Solutions Have Frustrated Competitive Availability.

The history of inferior MVPD support for consumer-sourced devices is so well documented by the Commission and the Court of Appeals that it need only be referenced here.⁷ After Congress enacted Section 629, there appeared four potential roadblocks to common reliance:

- (1) No single standard for digital transmission;
- (2) Unique and proprietary Conditional Access by local systems;
- (3) No assured consumer-sourced device access to program information, features and functions for linear MVPD transmissions (“one-way” compatibility); and
- (4) No assured consumer-sourced device interactive access to program information, features and functions (“two-way” compatibility).

The FCC initially announced that it would identify a standard for digital cable transmission,⁸ but found this unnecessary when all operators chose MPEG video compression with channel-based QAM transmission. CableCARDs ultimately provided a solution for common Conditional Access and one-way rendering and storage of programming (although this was in fact undercut by subsequent MSO deployment of two-

⁷ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Comments of CEA/CERC on the Fourth Further Notice of Proposed Rulemaking, at 3 nn.4-7 (June 14, 2010).

⁸ *In the Matter of Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, ET Dkt. No. 93-7, First Report and Order ¶ 144 (rel. May 4, 1994); *In the Matter of Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, ET Dkt. No. 93-7, Memorandum Opinion and Order ¶ 3 & n.9 (rel. Apr. 10, 1996).

way “switched digital” transmission). But offers of proprietary interactive solutions, under license from CableLabs, have not resulted in viable consumer-sourced product.⁹

CEA agrees with Nagra that in principle moving the “demarcation line” between external and home networks, from a CA interface to a standard IP interface, is a potential and necessary solution. However, Nagra’s prayer for relief is insufficient to assure this outcome. In the absence of such assurance, the result may be a move in the opposite direction – a Balkanization of home network interfaces that would further frustrate competition and also undercut common reliance on CableCARDS.

III. CEA Would Not Oppose A Limited Waiver Of Only Section 76.640(b)(4)(ii)(A).

CEA’s concerns as outlined above do not require CEA to oppose a limited waiver of Section 76.640(b)(4)(ii)(A), which requires cable operators to provide an HDMI or DVI video rendering output for high definition set-top boxes. Like MPEG transmission, this interface has become a *de facto* standard. It may be that, in a home network future of IP-empowered consumer-sourced devices, this interface will become less necessary or eventually unnecessary – but that day has not yet arrived. Therefore, *so long as* the operator must support CableCARDS on a common reliance basis, and must continue to make available high definition set-top boxes with HDMI for consumers that require them, CEA sees no reason to deny operators the option of omitting the video and audio rendering

⁹ See Federal Communications Commission, Connecting America: The National Broadband Plan, at Box 4-1, at 50, § 4.2, at 52 (Mar. 16, 2010); *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 ¶¶ 12, 23 (rel. Apr. 21, 2010).

engines on a limited number of high-definition devices for consumers who do not require them.

IV. CEA Cannot Support A Waiver Of Section 76.1204(a)(1) That Is Limited To The Relief Requested by Nagra.

CEA has opposed virtually every request for waiver of Section 76.1204(a)(1). On the occasions when the FCC twice postponed the implementation date of this section, CEA was vigorously opposed. CEA strongly supported the proposals in the National Broadband Plan to (1) better support the CableCARD interface, and (2) provide for an IP-based “gateway” successor.¹⁰

CableCARDs are inherently two-way devices. It has been the CableLabs license regime that has limited CableCARD-reliant products to one-way functionality. Nagra’s petition suggests that Nagra will be capable of achieving a license arrangement with some cable operators that will allow two-way operation. While CEA can support the impetus toward non-rendering, interactive gateways, it is not apparent why this must or should be accomplished at the expense of common reliance on CableCARDs.¹¹ Thus, as it has every other such waiver request, CEA must also oppose this one, at least in the absence of full Commission and industry support for a successor interface.

In several contexts, CEA has urged the Commission to approach the support of consumer-sourced devices on an integrated rather than piecemeal basis. When the Commission proposed to repeal its rule against Basic Tier encryption, CEA urged it to do

¹⁰ *In the Matter of A National Broadband Plan for Our Future, et al.*, GN Docket Nos. 09-47, 09-51, 09-137, and CS Docket No. 97-80, Comments of the Consumer Electronics Association on NBP Public Notice # 27, at 2-3, 8-9, 20-23 (Dec. 21, 2009).

¹¹ Nagra, which is itself a manufacturer of CableCARDs, does not suggest or imply that its solution could *not* be achieved via a CableCARD.

so in a context that would clarify and rationalize all interfaces for the connection of consumer-sourced devices.¹² When cable entities and a single device maker proposed a short-term solution for that company's devices that would be impacted by encryption, CEA commented that a long-term, standards-based, more transparent solution would have avoided such inefficient technical calisthenics, on behalf of particular devices, that would have little potential to aid competition or consumers generally.¹³

The Nagra petition provides no assurance that its benefits would extend to any other device, or would aid rather than impede the connection of consumer-sourced devices:

- The petition is unclear whether the services supported will be interactive in nature.
- In exchange for the standard CA interface, the petition says only that “services would be made available via a means similar to that described in Section 76.640(b)(4)(iii).” CEA has urged the Commission to provide for an interface to be compliant with this section that must be fully and reliably standard, two-way, and nationally interoperable. The petition seeks no such relief.
- The petition is unclear whether the device that would benefit from this waiver would be able to construct its own guide, via necessary network metadata, even when fully licensed to do so by a Guide data supplier. CEA has also regarded this ability as essential in any successor to the CableCARD interface.¹⁴
- The petition does not indicate what level of support for competitive devices would actually have to be *achieved* in order for the operator to receive the CableCARD waiver. Thus, an operator could support a *single proprietary* client device, or a single brand of customer-sourced device, and still receive the waiver of CableCARD common reliance.

¹² CEA Basic Tier Comments at 2-3.

¹³ In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment, MB Docket 11-169, PP Docket 00- 67; Commercial Availability of Navigation Devices, CS Docket No. 97-80; letter from Julie M. Kearney, VP, Regulatory Affairs to Marlene H. Dortch, Sec. FCC (July 31, 2012).

¹⁴ CEA/CERC AllVid Comments at 9-10; Reply Comments at 13-14.

V. CEA Agrees That Some Action By The Commission Is Necessary For Its Implementation Of Section 629 To Comply With Congressional Intent.

CEA's concern with the Nagra petition lies more in what it *does not* provide for than in what it does. CEA, in the context of the Commission's NOI on standards for gateway devices, has supported *both* returning to MVPDs the ability to integrate CA *and* the elimination of video and audio rendering from operator-sourced devices. In this sense, the Nagra petition is welcome as a step forward. But to grant such relief in the absence of an IP-based *standards context*, such as the one that the Commission itself has proposed in the National Broadband Plan, would be an unacceptable step backward rather than a constructive step forward.

Respectfully submitted,

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