

VIA ECFS

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

In the Matter of)	
)	
Buckeye Cablevision, Inc.)	
Request for Waiver of Section 76.1204(a)(1))	MB Docket No. 14-42
Of the Commission's Rules)	
)	CSR-8876-Z
Implementation of Section 304 of the)	
Telecommunications Act of 1996)	CS Docket No. 97-80
)	
Commercial Availability of)	
Navigation Devices)	
)	

REPLY COMMENTS OF SAMUEL J. BILLER¹

This letter is filed in response and opposition to Buckeye Cablevision, Inc.'s ("Buckeye's") request for waiver of the "integration ban" in Section 76.1204(a)(1) of the Commission's Rules – the rule which requires cable operators to use separate security (e.g., CableCARDS) in their leased set-top boxes.² As pointed out by the Computer & Communications Industry Association (CCIA) and TiVo Inc., crucial issues remain pending with the Commission regarding FCC rules intended to promote a competitive retail marketplace for

¹ Sam Biller has been a retail TiVo user since 2001. He currently owns and uses a TiVo Roamio Pro, TiVo Premiere XL4, two (2) TiVo Minis and a myriad of other Over The Top (OTT) video consumption devices. Sam has been active on the TiVo Community Forums at <http://www.tivocommunity.com/> since May 2002 and has over 1700 posts in the community. Sam has been a TiVo Investor for most of that time and has blogged about TiVo from a technology and investment perspective.

² Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, MB Docket No. 14-42, CSR-8876-Z, CS Docket No. 97-80 (Mar. 3, 2014) ("Buckeye Waiver Request"); Media Bureau Seeks Comment on Buckeye's Request for Waiver of the Integration Ban of Section 76.1204(a)(1), Public Notice, MB Docket No. 14-42; CSR-8876-Z, DA 14-321 (rel. Mar. 7, 2014).

navigation devices. Before considering Buckeye’s waiver request, the Commission should act on TiVo’s petition for reconsideration and CEA’s application for review request of the waiver granted to Charter Communications almost one-year ago.³ Further, the Commission’s 47 CFR Section 76.640 CableCARD technical support rules stand vacated by the Court of Appeals. The Commission has pending a TiVo petition that would reinstate these rules.⁴ The Commission has an obligation to clarify its CableCARD expectations before it considers waiving them.

As a consumer who currently relies on the retail availability of commercial navigation devices, I fully support the reinstatement of rules mandating the continued availability of CableCARDS until such time as a viable, nationally portable, software-based successor to CableCARD is available to retail navigation devices.

Common reliance on the same security standard is a principle that the Commission has repeatedly found is a necessary component for a retail market for Set-Top Boxes to emerge. William Lake, Media Bureau Chief, during recent U.S. Senate Hearings⁵, testified about the virtues of Common Reliance in response to a question from one of the Senators. I suspect that Common Reliance is the only reason that my retail TiVo boxes in Tampa, FL and Gainesville, FL can receive the majority of linear cable programming on the MSO networks of Bright House

³ See Charter Communications, Inc.’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules, MB Docket No. 12-328, CSR-8740-Z, Memorandum Opinion and Order, DA 13-788, 28 FCC Rcd 5212 (Apr. 18, 2013) (“Waiver Order”).

⁴ Opposition of Charter Communications, Inc. To Petition For Reconsideration, CSR-8740-Z, MB Docket No. 12-328 (June 3, 2013) at 3 n.6 (“EchoStar does not address downloadable security; what it changes is that CableCARD support is no longer required, and thus cable operators are free to rely solely on other compliant technologies...”); Comments of the National Cable & Telecommunications Association on TiVo Inc.’s Petition for Clarification or Waiver, CS Docket No. 97-80 (February 14, 2014); Comments of the National Cable & Telecommunications Association on TiVo Inc.’s Petition for Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67 (September 16, 2013).

⁵ Before the Senate Subcommittee on Communications, Technology, and the Internet, Hearing On: “Reauthorization of the Satellite Television Extension and Localism Act”, http://www.commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=23352a01-e1a7-47b0-9a56-27e88e76e378&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a

Networks in Tampa and Cox Communications in Gainesville. Imagine buying an iPhone and later learning if you move to another community it no longer works because your local service provider won't support it. Retail choice requires national portability. CableCARD does this today and any successor standard must likewise be nationally portable.

I won't argue the fact that CableCARD is a flawed solution for retail. I am not defending the status quo. The issue confronting the Commission is how to improve the national standard that has allowed for retail competition, not how to continue to weaken it by acting on waiver request after waiver request and inaction on important policy matters that have been sitting dormant for almost a year.

Detractors like the trade association of Comcast and the cable industry can point to a myriad of reasons for the lack of success of the retail CableCARD market.⁶ The first CableCARD-reliant products – televisions with CableCARD slots – came to market in 2003 – 2004 but in the absence of common reliance received poor or nonexistent support from cable operators as documented in FCC and court decisions.⁷

That lack of support finally led the FCC to implement common reliance on the same security technology (also known as the “integration ban”) as of July 1, 2007. By this time, CableCARD televisions were disappearing from the market due to lack of cable operator support. Because retail CableCARD devices were still being disadvantaged by cable operators,⁸

⁶ <http://www.bloomberg.com/news/2014-04-10/tivo-tries-to-keep-remote-interest-over-cable-lobbying.html>

⁷ See, e.g., *Charter Communications v. FCC*, 440 F.3d 31, 40-44 & n.10 (D.C. Cir. 2006); In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Dkt. No. 97-80, Second Reportand Order ¶ 39 & n.162 (Mar. 17, 2005)

⁸ See, e.g., Federal Communications Commission, *Connecting America: The National Broadband Plan* (“National Broadband Plan”) § 4.2 at 52 (“[C]onsumers who buy retail set-top boxes can encounter more installation and support costs and hassles than those who lease set-top boxes from their cable operators.”)

the FCC in 2010 adopted rules to strengthen its CableCARD regulations to deal directly with certain cable operators' evasion of CableCARD requirements, by providing for consumer self-installation of CableCARDS, access to switched digital programming, and ending economic discrimination against competitive products.⁹ While CableCARD success has been hobbled by a lack of support from certain cable providers and a refusal to allow retail devices to have access to two-way services like Video On Demand, CableCARD is a fully realized solution that provides consumers today with a choice of using a better alternative to an operator supplied box. In fact, TiVo has acknowledged multiple times during earnings conference calls the improved customer metrics and retail adoption associated with Comcast areas that support XFINITY On Demand VOD services on TiVo retail boxes. This is an excellent example of the impact of leveling the playing field for retail devices. It is also worth noting that Comcast doesn't employ switched digital video ("SDV") technology that further complicates retail adoption.

Even with CableCARD, certain cable operators like Bright House Networks and Cox Communications have treated their own leased boxes differently and implemented SDV technology that denied retail devices direct access to numerous cable channels. SDV uses the two-way cable infrastructure for upstream signaling to request a channel be sent to the set-top box similar to video-on-demand. However, retail boxes have been prohibited from using the upstream capability of the cable network and are thus unable to receive SDV signals directly. Users of retail devices in SDV signals have thus been forced to use operator provided equipment (so-called "tuning adapters") to enable their retail box to receive SDV signals, an approach antithetical to the goal of providing consumers with the choice to not use operator-provided

⁹ Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Report and Order and Order on Reconsideration, 25 FCC Rcd 14657 ¶ 5, 27 (2010).

equipment and still receive their cable channels. These Tuning Adapter boxes are notoriously unreliable and troublesome.¹⁰ Fortunately, my provider, Bright House Networks, has recently worked with Cisco, the supplier of the Tuning Adapter, and TiVo to implement a firmware update, years after introduction, to the Tuning Adapter to improve reliability. The SDV Tuning Adapter is another box that complicates the retail adoption equation.

The history of implementation of Section 629 shows that if Congress wants to promote choice and innovation, retail devices must have the same access to signals as operator-supplied devices. Allowing cable operators to treat the boxes they lease to subscribers differently than retail devices undermines retail choice and competition.

There is an existing policy objective of ensuring that retail devices have access to cable signals so that competitive retail products can be created with innovative features and functionality. Without a uniform standard for accessing signals, a retail market cannot exist. I would be ecstatic if my retail boxes moved to a new software-based security standard by which I could access ALL cable programming. What is needed is for a handful of companies to work cooperatively on a next generation standard under the supervision of the FCC. The granting of the Buckeye waiver and the continued inaction on pending issues eliminates any incentive for the industry to help develop a successor solution for retail devices.

The NCTA has been characterizing Charter's waiver and Buckeye's waiver request as a minor change and claiming that they still have to support retail CableCARD products. Again, allowing operator-supplied boxes to use a different security standard than retail boxes results in a tilted playing field that undermines retail choice and competition. Moreover, the NCTA and

¹⁰ <http://www.zatznofunny.com/2012-02/the-best-worst-cable-companies-for-tivo-owners/>

some of its members are simultaneously taking the position at the FCC that there are no rules requiring them to provide or support CableCARDs to retail devices (and the FCC should not reinstate any rules unintentionally vacated by the DC Circuit Court of Appeals in a decision, *EchoStar v. FCC*, that did not even address the CableCARD rules.) Further, there is already evidence submitted to the Commission by TiVo that CableCARD compliance is already dropping since the rules were unintentionally vacated.¹¹

If the integration ban is eliminated by waiver or decree, and the Commission agrees with NCTA's position, there will be no requirement for cable operators to use CableCARDs themselves and no requirement to supply CableCARDs to new retail devices. Indeed, no requirement for cable operators to even support existing retail CableCARD devices. Cable operators, like Comcast, Charter, and Buckeye, would be free to use new security technology but leave retail devices using legacy technology that they will have little incentive to support, keep current with new technology developments, or control costs. Would anyone reasonably expect any consumer to purchase a retail set top box for the express purpose of replacing their cable-supplied Set-Top Box if there was no assurance that their cable operator would actually support that retail box? Retail devices have to be treated the same, in terms of access to programming and support, as operator-supplied devices for consumers to have a real choice and for the effects of competition to take hold.

In support of its position that no current rules and no next generation standard are needed to guarantee that retail devices have access to cable signals, the NCTA has tried to portray cable apps on Xbox or Roku as evidence of the emergence of a retail set top box market. While there

¹¹ <http://www.zatznotfunny.com/2014-03/cablecard-tivo-fights-good-fight/>

has been some experimentation with apps on third party devices in the last couple of years, these experiments only serve to confirm that a successor security standard is essential.

None of these apps guarantee that a consumer can purchase a retail device to (a) receive all of the cable programming they are paying for; (b) record that programming for later viewing; (c) incorporate Internet-delivered content; (d) frame the experience in a user interface better and more innovative than the lowest-common denominator approach supplied by their cable provider; and (e) work with more than one provider. CableCARD does this for scheduled programming but it is clear that core MVPD services are moving on to IP technologies instead. Real device competition requires a successor solution in which consumers can have confidence that any retail devices they purchase for the purpose of receiving the cable programming to which they subscribe will be supported and will deliver their cable programming channels.

The removal of the AT&T U-Verse app on X-Box¹² last December confirms that apps provide no such assurance to consumers. AT&T U-verse had advertised its app on Xbox as an inducement for customers to sign-up for its service. Then it abruptly announced that it would terminate support for its app on the Xbox 360 service. The point is, these apps and other solutions come and go, and are not a reliable alternative to what is available on a competitive Set-Top Box where consumers are guaranteed access to all of their cable programming.

The video market is at a critical juncture with video about to undergo an IP transition. Now is the time for the Commission and Industry to seize the opportunity to foster a next generation standard for accessing television signals. Ensuring that consumers have retail choices from unaffiliated Set-Top Box manufacturers, and that such retail devices are interoperable on

¹² <http://www.multichannel.com/news/content/att-u-verse-tv-drop-support-xbox-360-december-31/356856>

networks nationwide, remains an essential, pro-consumer policy today. Indeed, the principle of requiring standards to enable competition in the market for communications equipment—leading in turn to consumer benefits in the form of greater innovation, lower prices, and higher quality — is one of the most settled and successful principles in telecommunications policy, and has been extremely successful in the wireline and wireless broadband markets.

I urge the Commission to do the right thing and delay any action on Buckeye’s waiver request, act on the CEA application and TiVo Petition for Reconsideration on Charter’s Waiver Request, reinstate the substantially non-controversial CableCARD rules, and move-forward with a nationally-portable, software-based successor to CableCARD that supports two-way access to all MVPD video services.

Respectfully submitted,

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