

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

In the Matter of)	
)	
Implementation of Section 304 of the Telecommunications Act of 1996)	CS Docket No. 97-80
)	
Commercial Availability of Navigation Devices)	
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	PP Docket No. 00-67
)	

COMMENTS



I. Introduction.

The American Cable Association (“ACA”) files these Comments in response to the Commission’s Fourth Further Notice of Proposed Rulemaking seeking comment on proposed fixes to the CableCARD regime, as well as changes to the Commission’s rules that are intended to encourage cable operators’ digital transition.¹

ACA supports the Commission’s proposed modification of its rules to allow cable operators to place into service new one-way navigation devices that process HD signals and perform both conditional access and other functions in a single integrated device, for the following reasons:

- The Commission’s proposed modification of its rules will benefit consumers.

¹ *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*, Fourth Further Notice of Proposed Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67 (rel. Apr. 21, 2010) (“*FNPRM*”).

- The proposed modification of the Commission’s rules will *not* substantially affect the retail market for retail CableCARD navigation devices.
- The proposed modification of the Commission’s rules will *not* substantially affect cable operators’ reliance on the CableCARD standard.

To the extent that the Commission may find the proposed modification of its rules will affect the retail market for retail CableCARD navigation devices, an exemption for only smaller operators would certainly *not* have a substantial effect.

American Cable Association. ACA represents nearly 900 independent cable companies that serve more than 7 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states and in nearly every congressional district. The companies range from family-run cable businesses serving a single town to multiple-system operators that focus on serving smaller markets. More than half of ACA’s members serve fewer than 2,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

In the *FNPRM*, the Commission has proposed modifying its rules to allow cable operators to place into service new one-way navigation devices that process an HD signal and perform both conditional access and other functions in a single integrated unit.² The purpose of this modification is to “further encourage digital transitions, which will make it easier for operators to increase broadband speeds and introduce other new services.”³ The Commission seeks comment on the proposed rule.⁴

II. The Commission’s proposed modification of its rules will benefit consumers.

² *FNPRM* at ¶ 22.

³ *FNPRM* at ¶ 22.

⁴ *FNPRM* at ¶ 22.

The availability of low-cost set-top boxes will allow small and medium-sized cable operators to transition channels from analog to digital thereby permitting them to reclaim valuable capacity to provide their customers with affordable new and improved advanced digital services.

In numerous filings with the Commission, ACA has shown the critical need for the availability of low-cost set-top boxes among small and medium-sized cable operators and the benefit to consumers.⁵ Such devices allow cable operators – particularly small operators serving smaller markets and rural areas – to accelerate their migration of channels from analog to digital, thereby reclaiming spectrum that could be used to deliver new and improved advanced services to their customers, including broadband. The availability of low-cost navigation devices provide cable operators with a cost-effective means to deploy digital set-top boxes to their customers for use with their second, third, and fourth household television sets, which allows them to continue viewing these new digital signals. Without these low-cost set-top boxes, cable operators would need to provide customers with more expensive CableCARD-compliant set-top boxes for each of their television sets, with the higher cost being passed along to consumers. The Commission acknowledged this in the *FNPRM*, noting that the proposed modification to its rules is intended to “further encourage digital transitions...,” and “will allow operators to offer increased broadband speeds and more high definition programming....”⁶

Many small and medium-sized cable operators are hesitant to move forward with purchasing available standard-definition integrated set-top boxes for fear of expending limited

⁵ See, e.g., *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51, NBP Public Notice #27 - Comments of the American Cable Association (filed Dec. 21, 2009); *In the Matter of Cable One, Inc. Request for Waiver of Section 76.1204(a)(1)*, CSR-8080-Z, American Cable Association Comments in Support of Request for Waiver (filed Nov. 28, 2008).

⁶ *FNPRM* at ¶ 22.

capital on set-top boxes that have diminishing value to consumers who are increasingly purchasing HD sets. By making an HD-only integrated set-top box available for purchase and distribution by operators, the FCC can jump-start the analog-to-digital transition for smaller, rural cable providers, which will lay the necessary groundwork for these operators to offer faster broadband speeds to consumers in the communities they serve. It will also increase the availability of HD programming to consumers throughout their homes, overcoming a significant handicap with the current rules that allow operators to deploy only the standard-definition versions of these boxes.

Under the Commission's existing rules and regulations, which ban integrated HD-only set-top boxes, small and medium-sized cable operators cannot afford to purchase the higher functionality HD set-top boxes currently available on the market. According to one cable operator, the least expensive CableCARD-compliant HD set-top box is available to cable operators for between \$300 and \$400 per unit, which translates into a monthly customer charge of between \$8 and 10%.⁷ Contrast this with the cost of an HD-only integrated set-top box, and the purported cost of about \$50 per unit.⁸

ACA fully supports the Commission's proposed modification to its rules. Consumers will benefit from the deployment of advanced services and upgrades, including faster broadband speeds, more HD programming, and VoIP telephony services. The benefits to consumers are real, and the proposed Commission action will not have any substantial impact on the Commission's mandate to promote a competitive retail market for navigation devices.

III. The proposed modification of the Commission's rules will *not* substantially affect the retail market for retail CableCARD navigation devices.

⁷ *In the Matter of Cable One, Inc.'s Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 24 FCC Rcd. 7882, 7884, ¶ 5 (2009).

⁸ *Id.*

In the *FNPRM*, the Commission seeks comment on whether the proposed limited modification to its rules “would affect the retail market for retail CableCARD devices substantially, and whether the potential effect on the retail market supports limiting any relief to smaller cable systems with activated capacity of 552 MHz or less.”⁹ ACA addresses those concerns below.

HD-only navigation devices. The retail market for HD-only, CableCARD-compliant navigation devices – the specific devices that are the subject of the *FNPRM* – will *not* be affected substantially by the Commission’s proposed modification of its rules. The reason is simple: No retail market exists for such devices. ACA was unable to find any HD-only, CableCARD-compliant navigation devices for sale on the websites of several electronic and big-box retail stores.¹⁰ Moreover, no evidence exists to suggest that consumer electronics manufacturers are either producing or have plans to produce any HD-only, CableCARD-compliant devices for direct sale to consumers. Simply put, in the 35 months since the integration ban went into effect – a period in which consumer electronics manufacturers have put to market numerous high functionality CableCARD devices – the retail market for HD-only CableCARD-compliant set-top boxes remains *nonexistent*. Hence, the Commission’s proposed modification of its rules to permit the deployment of integrated HD-only set-top boxes therefore cannot have any impact on the retail market that does not exist.

High functionality navigation devices. The Commission’s proposed modification of its rules will not substantially affect the retail market for higher functionality, CableCARD-compliant navigation devices, as the low functionality HD-only set-top boxes contemplated by the

⁹ *FNPRM* at ¶ 22.

¹⁰ On June 14, 2010, ACA checked the websites for Best Buy (<http://www.bestbuy.com/>), Abt Electronics (<http://www.abt.com/>), Fry’s Electronics (<http://www.frys.com/>), and TigerDirect (<http://www.tigerdirect.com/>).

Commission in the *FNPRM* are *not* a substitute for the higher functionality devices currently available on the retail market.

Companies such as TiVo and Moxi sell navigation devices directly to consumers, but *all* TiVo and Moxi devices available on the retail market include DVR capability.¹¹ Many TiVo and Moxi devices also include other advanced features. The TiVo devices provide access to online movie services such as Netflix, Amazon Video On Demand, and Blockbuster On Demand; online videos on YouTube; and streaming music and photos from Rhapsody, Music Choice, Live 365, Picasa, and Photobucket.¹² The Moxi devices provide similar features, including access to web-based content and services like Netflix, Hulu, YouTube, Flickr, and Rhapsody.¹³ TiVo and Moxi devices also feature remote scheduling capability, and the ability to access music, photos, and other media from a personal computer on a television.¹⁴ Both manufacturers' boxes are relatively expensive, particularly their HD devices. The least expensive new Moxi HD set-top box is the 3-Tuner HD DVR which can be purchased for \$599.¹⁵ The least expensive new TiVo set-top box is the TiVo Premiere which can be purchased for \$299.¹⁶ However, the TiVo set-top boxes – unlike Moxi devices – also require a service plan

¹¹ See TiVo Products Page, available at <http://www.tivo.com/products/home/index.html> (last visited June 14, 2010); Moxi Products Page, available at http://moxi.com/us/moxi_dvr.html (last visited June 14, 2010).

¹² See TiVo Premier and Premier XL, available at <http://www.tivo.com/products/tivo-premiere/index.html> (last visited June 14, 2010).

¹³ See Moxi 3-Tuner HD DVR Features, available at http://moxi.com/us/moxi_dvr.html (last visited June 14, 2010).

¹⁴ See TiVo Premier and Premier XL, available at <http://www.tivo.com/products/tivo-premiere/index.html> (last visited June 14, 2010); Moxi 3-Tuner HD HD DVR Features, available at http://moxi.com/us/moxi_dvr.html (last visited June 14, 2010).

¹⁵ See Moxi 3-Tuner HD DVR, available at http://moxi.com/us/moxi_dvr.html (last visited June 14, 2010).

¹⁶ See TiVo Premier, available at https://www3.tivo.com/store/premiere.do?WT.z_success=buy_cta%2520 (last visited June 14, 2010).

subscription of \$12.95 (monthly), \$129 (annually), \$299 (for three years), or \$399 (for the lifetime of the set-top box).¹⁷

The low functionality HD-only set-top boxes contemplated by the Commission in the *FNPRM* lack any advanced functionality. These devices simply process high-definition signals. Comparing the features of the high functionality navigation devices currently available on the retail market and low functionality HD-only devices side-by-side, it is apparent that the latter set-top boxes are *not* a substitute. The HD-only integrated set-top boxes do not have DVR functionality, nor can they provide access to online video services, streaming music and photos, and other advanced features of a TiVo or Moxi navigation device. It is inconceivable that consumers who spend hundreds of dollars for the cutting-edge, high functionality TiVo or Moxi navigation devices would instead consider acquiring a cable operator-issued, low tech, HD-only integrated set-top box that not only lacks the various advanced features of the retail devices, but also basic features such as an electronic programming guide and video-on-demand capability. The low functionality HD-only set-top boxes are therefore *not* a substitute for any HD navigation devices currently available on the retail market, and thus would not have a substantial impact on the retail market for retail navigation devices.

IV. The proposed modification of the Commission's rules will *not* substantially affect cable operators' reliance on the CableCARD standard.

The *FNPRM*'s proposed modification of the Commission's rules will not substantially affect cable operators' reliance on the CableCARD standard. Since the separable security requirements went into effect on July 1, 2007, the five largest cable operators – accounting for

¹⁷ See TiVo Service Plan Subscriptions, available at http://www.tivo.com/assets/popups/popup_tivo-service-premiere.html (last visited June 14, 2010).

approximately 80% of cable customers – have deployed almost 20 million CableCARDS.¹⁸ The small and medium-sized operators that make up ACA’s membership must comply with the integration ban as well,¹⁹ and there’s no evidence to suggest that these operators as a whole deploy CableCARDS at any rate significantly dissimilar from the largest operators.

Further, as the Commission made clear in the *FNPRM*, “Operators [will] still be required to offer CableCARDS to any subscribers that request them and to commonly rely on CableCARDS in **any digital video recorder and bidirectional devices** that they offer for lease or sale.”²⁰ The Commission has reaffirmed this principle as recently as last year:

[T]he Commission’s rules require...operators to continue to offer and support CableCARDS in their advanced functionality set-top boxes, as well as to make them available for use in digital cable ready devices purchased at retail. One of the overriding purposes of the Commission’s navigation device rules is to allow for national portability of consumer electronics devices purchased at retail regardless of the security standard that any specific cable operator uses. The fact that this is a waiver of the integration ban only and it is limited to apply only to the most basic of devices – one-way, non-HD, non-DVR devices – ensures that cable operators who choose to deploy the Subject Boxes will not frustrate this purpose because cable operators who choose to deploy the Subject Boxes are still required to support the national CableCARD standard in all other devices that they deploy.²¹

The Commission’s proposed modification will apply only to the most basic devices, and cable operators will still be obligated to support the CableCARD in all other devices that they deploy.

¹⁸ Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80 (filed Mar. 31, 2010).

¹⁹ See, e.g., *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd. 20885 (2003) (denying ACA’s request for certain small system exemptions).

²⁰ *FNPRM* at ¶ 22 (emphasis added).

²¹ *In the Matter of Evolution Broadband, LLC’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, Memorandum Opinion and Order, 24 FCC Rcd. 7890, 7896-97, ¶ 14 (2009) (citations omitted).

Similar to the discussion above, HD-only set-top boxes are *not* close substitutes for the high functionality devices deployed by cable operators today. Higher functionality devices issued today include, at a minimum, electronic programming guides and video on demand capability, and many of them include DVR functionality. Once again, it is difficult to conceive that consumers who opt to purchase or lease these higher functionality set-top boxes from their cable operators for their HD televisions today would instead choose an HD-only integrated set-top box from their cable operator that lacks some very basic features, such as an electronic programming guide.

To the extent the integrated HD-only set-top boxes have a substitute, it would be the low-cost, limited-capability ***standard-definition*** integrated set-top boxes that are issued by cable operators for which the Commission has already granted waiver of the separable security requirement.²² In all likelihood, if the Commission modifies its rules as proposed, cable operators would predominantly deploy the HD-only integrated set-top boxes in place of the standard-definition integrated set-top boxes issued today. Thus, the impact on cable operators' reliance on the CableCARD standard would be unaffected as such devices are already exempted from the Commission's separable security requirement.

V. To the extent that the proposed modification of the Commission's rules will affect the retail market for retail CableCARD navigation devices, an exemption for only smaller operators would certainly *not* have a substantial effect.

The market for navigation devices is driven by larger cable operators, not the small and medium-sized operators that comprise ACA's membership. Even if the Commission determined there was ***some*** impact on the retail market for high functionality devices due to the availability

²² See *In the Matter of Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 24 FCC Rcd. 7890 (2009); *In the Matter of Motorola, Inc., Cisco Systems, Inc., Pace Americas, Inc., Thomson Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order 24 FCC Rcd. 10939 (2009).

of low functionality HD-only integrated set-top boxes, it would **not** be because systems with activated channel capacity of 552 MHz or less, or those with less than 5,000 subscribers, were able to deploy such devices. These operators make up approximately 8% of the cable systems in the country, and provide service to an even smaller percentage of cable subscribers.²³ It is hard to imagine that permitting just these smaller cable operators to deploy HD-only integrated set-top boxes would influence the decision of the largest consumer electronics manufacturers to produce and sell retail set-top boxes. Modification of the Commission's rules for just smaller operators would certainly *not* have a substantial impact on the retail market.

VI. Conclusion

ACA fully supports the Commission's proposed modification of its rules to allow cable operators to place into service new navigation devices that process HD signals and perform both conditional access and other functions in a single integrated device. ACA urges the Commission to act expeditiously to implement its proposal.

²³ Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, at 4 (filed Apr. 12, 2010).

Respectfully submitted,

AMERICAN CABLE ASSOCIATION



By: _____

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
2415 39th PI, NW
Washington, DC 20007
(202) 494-5661

Jeremy M. Kissel
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Attorneys for the American Cable
Association

June 14, 2010