

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	CS Docket No. 01-129
Competition in the Market for the)	
Delivery of Video Programming)	

COMMENTS OF THE CONSUMER ELECTRONICS ASSOCIATION

I. INTRODUCTION

The Consumer Electronics Association (“CEA”) hereby respectfully submits its comments to the Commission’s Notice of Inquiry (“*NOI*”) in the above-captioned proceeding.¹

In its *NOI*, the Commission seeks information and input regarding various issues related to the role of consumer electronics equipment in the video programming marketplace. More specifically, the Commission seeks information regarding the digital capabilities of consumer premises equipment, the retail availability of navigation devices, and status on the development of industry standards for copy protection and interoperability.² CEA takes this opportunity to provide related input in this proceeding and reiterate the need for Commission action to facilitate competition between consumer electronics manufacturers and cable operators.

II. RETAIL AVAILABILITY OF NAVIGATION DEVICES

In its *NOI*, the Commission seeks information on the retail availability of navigation devices to consumers.³ Simply put, navigation devices are *not* available at retail. There is still

¹ See *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, CS Docket No. 01-129, 66 Fed. Reg. 35431 (rel. June 25, 2001) (“*NOI*”).

² See *NOI* ¶ 56.

³ See *Id.*

no final “build-to” standard for Point of Deployment (“POD”) host devices. Because of the lack of full and finalized standards relating to navigation device requirements for the development of a POD-Host interface (“PHI”), no functioning PODs or host devices for PODs can yet be designed.

As CEA has documented in other proceedings before the Commission,⁴ the development of a retail market for navigation devices has been stymied by the cable industry’s failure to comply in good faith with the relevant Commission rules and participate in inter-industry efforts to develop open standards for navigation devices.⁵ Communications between the cable and consumer electronics industries in the pursuit of compatibility solutions remain fragmented in the absence of an inter-industry standards-setting consultative body charged to coordinate the process.⁶

Under Section 629 of the Communications Act of 1934, as amended, navigation devices must be made commercially available to consumers.⁷ The Commission diligently adopted rules to facilitate this process.⁸ Unfortunately, however, cable multichannel video programming distributors (“MVPDs”) and their preferred equipment suppliers have merely paid lip service to the Commission’s rules, which require the adoption and implementation of open, cross-industry

⁴ See *In the Matter of Compatibility Between Cable Systems and Consumer Electronics Equipment*, Written *Ex Parte* Presentation of the Consumer Electronics Association, PP Docket No. 00-67 (filed May 3, 2001).

⁵ See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Further Notice of Proposed Rulemaking and Declaratory Ruling, CS Docket 97-80, 15 FCC Rcd 18199 (2000) (“*Section 304 Implementation FNPRM & Declaratory Ruling*”).

⁶ See *In the Matter of Compatibility Between Cable Systems And Consumer Electronics Equipment*, Written *Ex Parte* Presentation of CEA, PP Docket No. 00-67 (filed May 03, 2001).

⁷ See 47 U.S.C. § 549.

⁸ See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, CS Docket No. 97-80, 13 FCC Rcd 14775, 14776-77 (1998); See also *Section 304 Implementation FNPRM & Declaratory Ruling*.

standards that would be the basis for a truly competitive independent retail market for cable-system equipment such as navigation devices.⁹ The reality is that the cable industry, while attempting to create an illusion of compliance, has actually stalled the development of standards in order to minimize, and arguably neutralize, navigation devices competition in the retail market. Cable operators continue to deploy digital set-top boxes that ignore the PHI (or include it only as an unessential add-on), and demote digital consumer electronics equipment to the status of monitors and nearly-manual passive recording equipment. At the same time, they have moved forward expeditiously to develop proprietary standards and applications that effectively shut out non-cable affiliated manufacturers, retailers and consumers from making, selling, and buying such devices.

The absence of support from the cable industry for open standards that will make possible a retail market in navigation devices, and the cable industry's preference for proprietary set-top box technologies that foreclose such availability, also have implications for the Commission's inquiry with respect to interactive television ("ITV").¹⁰ Cable operators act as "gatekeepers" to ITV services on their systems and have shown their intent to support proprietary, interactive head-end ITV applications rather than open standards developed with and available to other industry players. Electronic program guides ("EPGs") that are essential for program navigation in digital "cable-ready" products, such as TV sets and set-top boxes, are also the primary gateways to new interactive television offerings. On February 22, 2000, CEA and the National Cable Television Association ("NCTA") adopted two agreements regarding compatibility between cable systems and consumer electronics equipment. One of those agreements focused on carriage of PSIP ("Program and System Information Protocol") over cable plant. Carriage of

⁹ See 47 C.F.R. §§ 76.1200 – 76.1210.

PSIP is essential for the presentation of EPGs and the basic tuning functions of digital televisions and other navigation devices. Unfortunately, despite continued work on “build-to” standards for navigation device hardware, there has been no evident change in status in actual cable industry implementation of the February 22, 2000 PSIP carriage agreement. There is still no commitment by any of the major content providers to make available for carriage the PSIP information that the February 22 agreements were intended to support. Moreover, there have been no significant developments or undertakings by the cable industry in those areas identified in the PSIP agreement as areas where technical changes and system redesign were needed to ensure proper reception of PSIP by cable-ready receivers. Unless a “PSIP-friendly” environment is created by the Commission, competition in navigation devices, EPGs, and ITV will all continue to suffer.

It is clear that there has been a market failure in the retail market for cable-system equipment and navigation devices. One only need visit any electronics retailer to verify that navigation devices are not available. The passage of time hurts the prospects for a thriving competitive commercial navigation devices market because cable operators are rapidly deploying new digital set-top boxes containing proprietary solutions for the delivery of digital cable services within their networks at an accelerated pace as they upgrade their systems. This threatens to saturate, and thereby foreclose, the market for navigation devices before any independently supplied devices can be designed or manufactured. Prompt Commission intervention is needed to stimulate and facilitate the creation of a thriving retail market for navigation devices.

¹⁰ See *NOI* ¶¶ 42-45.

III. COPY PROTECTION MEASURES WITHIN THE POD HOST INTERFACE

In its *NOI*, the Commission also seeks information regarding the copy protection measures contained in the POD-Host Interface.¹¹ In response, CEA expresses its disappointment at the slow progress being made regarding the finalization of standards on POD-Host Interface capability for navigation devices and its concern regarding the likelihood that the copy protection regimes currently being advocated by the industry will harm consumers.

The navigation device problem discussed above is exacerbated by the cable industry's intent to impose a PHI license that would roll-back home recording rights, control market entry of new consumer electronics equipment and functionalities, compromise manufacturers' intellectual property rights, and threaten the continued interoperability of the embedded base of television equipment now in American homes. While there have been recent positive developments,¹² the copy protection debate is far from over, and until the issues pertaining to copy protection are resolved, competitive products cannot be manufactured and made available to consumers. It is essential that the critical public policy issues raised by the PHI license be discussed and debated in a transparent manner. Therefore, CEA reiterates its request for the Commission to put the PHI license out for public comment so that consumers and other interested parties have an opportunity to express their views on the license's implications for fair use recording and other essential issues. It will only be through Commission intervention that American consumers will reap the benefits of both digital cable systems and the most advanced designs in digital consumer electronics equipment.

¹¹ See *NOI* ¶ 56.

¹² The recent announcement that Sony Pictures Entertainment, Warner Brothers and the Digital Transmission Licensing Administrator ("DTLA" or "5C") agreed that these two major studios would use the 5C Digital Content Transmission Protection System for transmission by cable and satellite is an important step toward resolving the copy protection controversy, but does not directly address the difficulties created by the onerous copy protection requirements of the cable industry's PHILA approach.

IV. CONCLUSION

Because of the cable industry's failure to openly and actively participate in industry standardization processes, the Commission's rules and statutory mandates pertaining to commercial availability of navigation devices remain unfulfilled. Further, competition in the market for video programming has been stymied to the detriment of consumer electronics manufacturers and consumers. Cable operators are poised to make the situation even worse by adopting copy protection mechanisms containing unprecedented restrictions. CEA encourages the Commission to take appropriate action to remedy this situation.

Respectfully submitted,

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