November 15, 2006

By Hand and ECFS
Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CS Docket 97-80

Dear Chairman Martin:

The undersigned consumer and public interest groups are writing to express our opposition to petitions to further delay implementation of the set-top box integration ban. We believe that such a ban is critical to ensuring competition in the set-top box market, which will relieve consumers from the onerous costs of the cable monopoly over set-top boxes by increasing retail choice, lowering prices and creating market-based incentives for functional innovation. Moreover, the trend toward migration of popular and premium channels to the digital tier leaves consumers ever more vulnerable to excessive monthly rental costs for cable distributor boxes. Consumers are already hostage to the costly programming packages offered by cable. Migration of some of those channels to the digital tier piles yet more burdensome costs on consumers already suffering from exorbitant cable price hikes.

Ten years after Congress mandated competition in the set-top box market and eight years after the FCC adopted regulations implementing this mandate, consumers have already waited too long for meaningful market-based alternatives to the costly set-top boxes offered by cable distributors. It is time for the cable industry to comply.

As you know, the FCC adopted the integration ban in 1998 pursuant to Congress' mandate under 47 USC § 629, which requires the Commission to "adopt regulations to assure the commercial availability" of devices used by consumers to access cable channels. The ban, which was due to commence on January 1, 2005, has now been extended twice, under pressure from the cable industry, to July 1, 2007.

With the July 2007 deadline looming, various segments of the video distribution industry are again seeking to postpone the effective date of the integration ban, or limit it to only so-called "high-end" devices. Charter and Comcast are seeking waivers of the integration ban for "low-cost, limited function" set-top boxes. Their definition of "low-cost, limited function" boxes are those that do not have 1) high definition output; 2) multiple tuners; 3) digital video recording and storage capabilities; or 4) broadband Internet access. The problem with this request is that such "low-end" boxes likely encompass a very significant proportion, if not a majority, of set-top boxes on the market today, depriving those consumers who cannot afford high-end set-top boxes of the benefits of competition. More importantly, these "low-end" boxes can receive switched digital, interactive pay-per-view, and video on demand programming that the only

competitive navigation devices available at retail today cannot receive under the unidirectional Plug and Play Agreement.

Similarly, NCTA has asked for a waiver of the ban until such times as it implements DCAS, a "Downloadable Conditional Access System," or December 31, 2009, whichever is sooner. While DCAS, if fully disclosed and less hardware-proprietary than as described to date, may be a more cost-effective solution than CableCARD, the prospect of DCAS is far too hypothetical to ask consumers to absorb yet another delay in viable retail competition. There is neither a timeline for the availability of this technology, nor certainty that the technology is even feasible or will be open to all. NCTA's DCAS proposal lacks sufficient information for the Commission to effectively weigh the costs and benefits of the requested waivers. Regardless, extending the waiver of the integration ban for another three years disregards clear congressional intent to promote retail competition in set-top boxes.

Finally, we urge you to reject the cable industry canard that an integration ban would raise the prices for consumer equipment. First, competing estimates by the electronics industry suggest far smaller estimates of the resulting cost impact. Second, the cable industry argument disregards the competitive pressures that retail competition would bring to bear on cable distributors, providing incentives to establish more competitive monthly rates. Third, cable's estimate appears to assume that any cost increase that may arise would be spread out over just two years, ignoring far longer amortization schedules that allow distributors to spread equipment costs over a much longer period of time. Fourth, cable's argument fails to reflect economies of scale that will be realized once common reliance is achieved. Finally, any cost increase that may arise will be offset by the long-term benefits of meaningful competition. Regardless, the Commission should look with skepticism on cable's arguments, given that cable providers currently impose monthly rental fees for boxes for as long as the consumer subscribes to digital cable -- well after the distributor has covered the equipment costs.

Congress was right when it sought to promote competition in the set-top box market. The cable industry's continuous efforts to postpone this mandate are anti-competitive and anti-consumer. The Commission should no longer condone them.

Sincerely,

Consumer Federation of America
Consumer Project on Technology
Consumers Union
Electronic Frontier Foundation
Free Press
Media Access Project
Public Knowledge
U.S. Public Interest Research Group

cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein

Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Heather Dixon
Jessica Rosenworcel
Rudy Brioché
Chris Robbins
Cristina Chou Pauzé
Donna C. Gregg
Andrew Long
Mary Beth Murphy
Steven Broeckaert
John Norton
Michael Lance
Alison Greenwald