

Before the
House Committee on Energy and Commerce Committee
Subcommittee on Telecommunications and the Internet

Staff Discussion Draft
To Create a Statutory Framework For
Internet Protocol and Broadband Services
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Written Testimony of
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Introduction

Chairman Upton and Ranking Member Markey, my name is Joel Wiginton, and I am Vice President and Senior Counsel for Government Affairs at Sony Electronics Inc. We are a leading manufacturer of consumer electronics devices, including televisions, DVD players, and personal computers. My company appreciates the opportunity to express its views on the staff discussion draft creating a statutory framework for Internet protocol and broadband services.

Over the past several years, consumers nationwide have benefited from a revolution in consumer technology – a revolution that has allowed for an ever-increasing array of products to interconnect and access the power of IP-enabled services through the Internet. Consumers enjoy “on-demand” access to all types of content using a vast array of consumer electronics devices. This revolution has fueled the U.S. economy and helped to maintain our country’s leadership in innovation and entrepreneurship.

Policymakers have long recognized the value of unfettered access to communication services. FCC regulation in the 1970s and 1980s fostered the growth of the Internet by prohibiting telephone companies from preventing the offering of “enhanced services” and allowing consumers to attach their own devices to the network. Further, Congress recognized the importance of consumer choice when it enacted, in 1992, Section 624A of the Communications Act mandating compatibility between

consumer electronics and cable television systems and, in 1996, Section 629 mandating the commercial availability of navigation devices connecting to multichannel video programming systems.

Promoting Market-Based Competition and Preserving the Marketplace for Edge Technologies

As an industry, we are excited about the potential for new, competing broadband services, including new video programming services. We believe that these new services should be able to flourish and not be saddled with burdensome and inappropriate legacy regulations. At the same, we believe that the success of broadband services depends on preserving the existing paradigm between consumer electronics manufacturers, service providers, network operators, content developers, and the government. This paradigm includes a commitment to open and unfettered consumer access to content, services and applications, and protecting consumers' ability to connect devices of their choice.

High-speed broadband networks offer a platform for innovation that will thrive if application developers, device manufacturers, and network providers are free to differentiate their offerings and invest in new technologies without restrictions imposed by other industry players. We believe, therefore, that innovation will flourish *only* if device manufacturers have certainty that their products will be able to connect to IP networks and broadband services.

If this freedom is not preserved in the broadband world, then network service providers will be able to dictate CE product design and functionality and to favor equipment of their own design and making over equipment provided by unaffiliated parties in the competitive marketplace. Using proprietary standards and restrictive licensing terms, service providers will be able to control the consumer experience, determining what devices consumers can use and how they use them. If service providers exercise this ability, the retail marketplace for "edge network" technologies like TiVo and portable video players, and the incentive to create new technologies, will no longer exist.

Although we are hopeful that detailed regulations will not be as necessary with respect to emerging technologies as has been the case in the past (for example, with cable television), we believe that it is essential for Congress to direct and empower the FCC to ensure that consumer devices that can attach to broadband services will become commercially available. Consumers ultimately will benefit from the resulting array of choices available to them.

Enforcement Mechanisms for “Net Neutrality” Principles Should Be Included in the Legislation.

We also would like to express our continued support for applying "net neutrality" principles to broadband Internet access services. Section 104 in the draft bill applies these principles to such services. However, we believe that to ensure adherence to these principles, swift and appropriate action must be taken if they are violated. Additionally, we hope that service providers do not take unjust advantage of the exemptions in Section 104 to avoid complying with the principles.

Ensuring the Commercial Availability of Devices that Attach to Broadband Video Services

As discussed in the introduction, in 1996 Congress recognized the importance of consumer choice when it enacted Section 629 mandating the commercial availability of navigation devices connecting to multichannel video programming systems. We are pleased that the current draft bill directs the Federal Communications Commission to develop comparable regulations to apply to broadband video services providers.

As the Commission develops these regulations, we believe that it is vital for such regulations to include an explicit "right to attach" competitive devices. The language set forth in Section 624A and Section 629 does not include a clear right to attach. We ask, therefore, that the FCC be directed to include in its regulations an explicit right to attach

commercially available devices to broadband video services so long as they do not harm the network or enable theft of service.

Further, licenses for these technologies that allow the attachment of devices to broadband video services should not impose unrelated or unnecessary burdens on licensees, such as prohibiting designing the same device to attach to a separate broadband Internet service if the consumer has subscribed to such a separate service. We respectfully request the addition of amendatory language prohibiting broadband video service providers from imposing such limitations in their licenses.

In addition, to ensure that the current “two-way plug and play” negotiations among cable providers and CE manufacturers are not stalled or undermined, we ask that language be added to the bill stating that until the Commission enacts new regulations, the current regulations implementing Sections 624A and 629 for cable operators shall continue to apply to covered multichannel video providers (cable) even after they qualify to be treated as broadband video service providers..

Access to Persons with Disabilities

The consumer electronics industry supports the goal of ensuring that persons with disabilities have access to products that attach to broadband services. However, we believe that the current draft bill, instead of working toward that goal, will work against it.

The draft bill widens the scope of existing accessibility laws by including any and all devices used to access broadband Internet, voice and video service. It also creates a new undue burden standard that would require every manufacturer, on a case by case and potentially a product by product basis, to prove an undue burden. The uncertainty, compliance, and potential litigation costs would greatly impact manufacturers' ability to develop new, innovative devices that attach to broadband services.

Current telecommunications law (Section 255) stipulates that manufacturers must provide products that are “accessible to and useable by persons with disabilities, where readily achievable.” The “readily achievable” standard is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” The current committee draft legislation defines an “undue burden” as meaning “significant difficulty or expense.” Thus, although the factors used to evaluate whether a feature or function is “readily achievable” or an “undue burden” are similar, the analysis could result in a radically different level of obligation for manufacturers.

This difference could be critical for the ability of manufacturers to provide products with a variety of different features and functions that meet the needs of different markets. Under current law, manufacturers of telecommunications consumer products have been able to provide products with bare-bones capabilities at low cost and other products with enhanced capabilities at a fair market price. CEA is concerned that the change to an “undue burden” standard would result in a regulatory environment that would require every product be equipped with any feature that a single high-end product might be able to employ. The unfortunate result would be that manufacturers could become fearful to innovate in accessibility features, and hold back innovations that would otherwise have benefited consumers with disabilities.

We are committed to working on compromise legislative language that would address the needs of the disability community, while not unreasonably impacting manufacturers and harming the overall economy.

Conclusion

Sony, and indeed CE manufacturers generally, support bringing true competition to the market for video services as soon as possible. We particularly support the efforts of new facilities-based entrants like the ILECs. Marketplace competition for video services will bring consumers lower prices and allow manufacturers to develop new and innovative products for consumers to access these services.

Again, thank you for the opportunity to address the Committee on these important matters. We look forward to continued cooperation with the Committee and other interested parties.