

# **The Free State Foundation**

**A Free Market Think Tank For Maryland...Because Ideas Matter**

## ***Perspectives from FSF Scholars***

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### **FCC Should Let Bygones Be Bygones**

**by**

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At the Consumer Electronics Show in January, FCC Chairman Kevin Martin took a hard line on waiver petitions filed by cable operators seeking a delay of the July 2007 date by which they must stop providing set-top equipment that integrates both security and navigation functions.

In Washington, the FCC's Media Bureau denied Comcast's waiver request. The National Cable & Telecommunications Association has also petitioned the FCC to waive the integration ban for all cable operators until the deployment of downloadable security, or December 2009 (whichever comes first).

The Communications Act says the FCC "shall waive" the ban upon "an appropriate showing." More than an appropriate showing exists to grant relief from a rule developed during a bygone monopolistic era.

In 1996, Congress authorized the FCC to adopt rules enabling consumer-electronics manufacturers to make "plug-and-play" equipment that would work with any content provider's service. In 1998, the agency required cable operators to develop a physical device—now called a CableCARD—containing the security functions that could be inserted in independent manufacturers' equipment. Cable operators now support more than 500 models of digital cable-ready devices.

Unfortunately, the FCC went further, prohibiting cable companies from integrating both security and non-security functions in one device, even while acknowledging that the changing market made it "a particularly perilous time for the adoption of regulations." Since 1998, things have moved even quicker. Now it's clear the costs of implementing the ban exceed any consumer benefits.

Cable operators—and Verizon, an important new entrant in the marketplace, which has its own waiver petition pending—estimate compliance will add \$2-\$3 monthly to the set-top-box rental fee. Downloadable security enabling content providers and consumer electronics manufacturers to rely on an identical security function is on the horizon. Why implement a costly edict likely to slow it down?

With the broadband marketplace's competitiveness, the FCC need not fear that service providers will alienate consumers by foisting set-top boxes on them they don't want. This is not the analog world of the telephone monopoly of the '70s, when the FCC required the Bell System to separate customer premises equipment from transmission services. Then, the Bell System had the ability to discriminate, and one ubiquitous network made it far easier and cheaper to devise a standard equipment interface.

The integration ban is regulatory overkill. The commission should postpone a rule that might have meant something in 1998 but is counterproductive in 2007.

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