

Consumer Electronics Retailers Coalition



MARCH 1, 2005

VIA ECFS

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Communications in CS Docket 97-80

Dear Ms. Dortch:

With respect to the Commission's regulation set forth at 47 C.F.R. Section 76.1204, and the Commission's possible report on and review of it, the undersigned requests that the following position of the Consumer Electronics Retailers Coalition (CERC) be received and entered into the record in the above referenced Docket, as having been communicated in writing to those listed below:

1. CERC was an early supporter of this rule, which requires Multichannel Video Programming Distributors, by July 1, 2006, to begin common reliance on the security interface regime made available to competitive entrants. The necessity of this rule has been demonstrated by the fact that delays in its implementation have apparently and repeatedly led to a lower priority being assigned to investment in factors necessary to support competitive entrant devices.
2. CERC remains entirely supportive of this rule and believes its effective implementation should not, again, be pushed back.
3. CERC and its members believe in and support technological progress. Rule 76.1204 can and should be interpreted in a way that supports both progress and competition.
4. The entire purpose of rule 76.1204 is to achieve *common use* of a security interface, in the interests of (1) long run efficiency and (2) a "level playing field" for competitive entrants. Any action taken or interpretation made now with respect to this rule should be directed toward this end.
5. An interpretation or postponement of the effect of rule 76.1204 that does not support competitive entry should at long last be unacceptable. If the rule is now to be construed as consistent with a "downloadable security" approach as mentioned in the February 24 *ex parte* filing of Comcast, Microsoft and Time Warner, it ought to be

possible to do so *without* moving its effective date – as the implementation of such a technology would not be inconsistent with the rule. However, if a “downloadable security” technology does *not* accommodate competitive entrants, a move to such technology should *not* be the basis for a postponement of implementation – otherwise, the very purpose of the rule – a *commonly used* security interface – would be defeated.

6. CERC agrees with the position expressed by the Consumer Electronics Association in its March 1, 2005 *ex parte* filing – that a “downloadable security” solution *can* be consistent with the objectives and existing language of rule 76.1204 -- but that it *will* be so *only* if the new technology is offered to and implemented by competitive entrants on terms that are fair, non-discriminatory, and supportive of expeditious entry.
7. The efforts of the Commission should be directed toward establishing, rather than preventing, common reliance on security interfaces. Allowing MVPDs covered by this rule to avoid relying on CableCARDS until they are ready to shift to a future technology would (1) leave competitive entrants (and retailers) relying on an “orphan” technology whose support would be a second or third priority, and (2) leave the MVPDs free to implement “downloadable security” in a way that does not support products of competitive entrants. In such case the competitive entrants would seem to have no recourse, as the MVPDs would now be in a position to claim technical compliance with the rule.
8. If MVPDs are not able to move to this sort of downloadable security regime by July 1, 2006, then it seems necessary that rule 76.1204 indeed remain in place – otherwise, CableCARDS and their users would remain orphaned and isolated, while MVPDs prepare to move from an “integrated box” regime that does not support competitive products, to a “downloadable security” regime that *also* does not support competitive products. This would be at clear variance with the objective of the rule.
9. It is for these reasons that common reliance must be integral to any action taken by the Commission on this rule, and that such action should be taken within the framework of the text of the existing regulation – including its effective date.

This letter is being provided to your office in accordance with Section 1.1206 of the Federal Communications Commission rules. A copy of this letter has been delivered by e-mail to those listed below.

Respectfully submitted,



Marc A. Pearl
Executive Director

CC:

The Honorable Michael K. Powell
Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Jon Cody
Jordan Goldstein
Stacy Robinson Fuller
Daniel Gonzalez
Catherine Crutcher Bohigian
Eric Bash
Kenneth Ferree
Deborah Klein
Rick Chessen
Bill Johnson
Natalie Roisman
Steve Broeckaert
Mary Beth Murphy
Alison Greenwald
John Wong
Thomas Horan