

**Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 304 of the Telecommunications Act of 1996)	CS Docket No. 97-80
)	
Commercial Availability of Navigation Devices)	
)	
Verizon Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1))	CSR-7042-Z
)	
)	

**Comments of the Consumer Electronics Association
On Verizon's Request for Waiver of 47 C.F.R. § 76.1204 (a)(1)**

September 18, 2006

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**Consumers of the Consumer Electronics Association
On Verizon's Request for Waiver of 47 C.F.R. § 76.1204 (a)(1)**

In its June 1998 Report and Order and the accompanying regulations, the Commission required that by January 1, 2005, cable operators also rely on whatever security and interface technology the operators would make available for the attachment of competitive entrant navigation devices.¹ Subsequently, at the initiative of consumer electronics (“CE”) and information technology (“IT”) manufacturers and retailers, the FCC amended its regulations to exclude analog converter boxes from this obligation, explicitly so as to allow the cable industry to concentrate on developing security interfaces and other technology to allow the attachment and operation of competitive digital devices.²

¹ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Report and Order (rel. June 24, 1998)(“1998 Report and Order”).

² *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Order on Reconsideration (rel. May 14, 1999) (“1999 Reconsideration Order”).

In this request for a waiver, Verizon asks the Commission to grant it a blanket exemption from any compliance with Section 76.1204(a)(1) of the Commission's rules, limited with respect to neither product scope nor time. The fundamental basis for this request is the expectation that conditional access techniques in the cable industry will, at some point in the future, move to a "DCAS" system that Verizon itself *opposes* as "neither open nor interoperable," and not designed or suited for its own products.³ If the Commission's rules with respect to competitive availability and waivers have any meaning whatsoever, this request must be denied.

I. Verizon Has Not Demonstrated That A Waiver Is Necessary For Or Related To The Introduction Of Any New Service.

Verizon, as a new entrant cable *operator*, seeks the benefit of provisions designed to allow the Commission to consider waivers for new *services*. Nothing in Verizon's filing, however, provides evidence as to any new *service* element in Verizon's network that would make a waiver appropriate. Instead, Verizon describes at length the attributes of its network, but without any nexus either to the purpose of Section 629 or to the objectives of Section 76.1204.

The network and services as described by Verizon, like conventional cable systems, make most but not all services available to subscribers who use the devices of competitive entrants. Verizon offers a "QAM" set of services and an analog tier, both of which are conventional in nature and potentially available to CE devices that rely on CableCARDS.⁴ Verizon admits that its "analog" tier requires no set-top box at all, and

³ Verizon's Request for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1), CRS-7042-Z at 13 n.20 (Aug. 8, 2006) (the "request").

⁴ *Id.* at 8 n.7.

that its QAM service is “much like [that of] traditional cable companies.”⁵ These are, in fact, the services at issue with respect to CableCARD support of CE devices. Verizon, therefore admits in its own request that there is nothing about these services that is “new” with respect to CableCARDS. Verizon, in fact, states that it supplies CableCARDS to subscribers who wish to buy these services and receive them on Digital Cable Ready products.⁶

Even if regulations could be stretched to encompass new entry by a *service provider*, nothing about Verizon’s service, its timing and preparation, or its vendor (the dominant supplier to the cable industry) entitles Verizon to any exclusion from the obligations of Section 76.1204. Verizon has been (or should have been) well aware of the requirements of Section 76.1204(a)(1) since the inception of its plans to become an MSO. Moreover, it chose a vendor that has been experienced with CableCARDS since their inception.

II. Verizon’s Arguments As To A Chilling Effect On The Introduction Of Additional Services Are Conclusory And Unsupported.

Verizon has not pointed, and cannot point, to a single technical obstacle posed by CableCARD reliance to the introduction of any new or unique cable or IPTV service. Nowhere in the description of either service is any technical factor cited that would pose any obstacle to CableCARD reliance in those elements of Verizon’s navigation devices that require the descrambling of signals. Verizon’s argument is, instead, the “diversion of

⁵ *Id.* at 8.

⁶ *Id.* at 5, 20, Declaration of Brian H. Whitton at 4.

resources” argument that also has been made by cable, to justify delay and insulate CableCARDS from the operation of Moore’s law, since 1998.⁷

III. Verizon’s Request Cannot Specify Or Even Project Any “Limited Time.”

While Verizon asserts, as any waiver request must, that the request is for a “limited time,” Verizon’s own arguments are clearly to the contrary. The *only* basis for the “limited time” assertion is the prospect of a new form of conditional access, “DCAS.” Yet Verizon itself argues (persuasively, in CEA’s view) that the only form in which DCAS has been specified is controversial, unacceptable to Verizon, indefinite as to implementation, and highly uncertain as to suitability for common reliance.

So, while the only sense in which the Verizon request is for any limited time is the proposition that implementation of DCAS is “around the corner,” the balance of Verizon’s discussion of DCAS is strongly to the contrary. Verizon demonstrates that as conceived and discussed thus far in public by cable MSOs and CableLabs, DCAS is controversial and unacceptable to Verizon and others because it is “neither open nor interoperable.”⁸ Verizon has not put forward any downloadable security alternative to “DCAS” or even indicated that it has explored any alternative to the CableLabs proposal that it deems unacceptable. Hence Verizon has presented *no* evidence as to why any waiver would be for a limited time.

⁷ See, e.g., *Commercial Availability of Navigation Devices*, CS Docket No. 97-80; CSR-7049-Z, Consumer Electronics Association (“CEA”) Comments at 3, 11 (Sept. 18, 2006) (“CEA Comments on Charter request”).

⁸ Request n. 20.

IV. Verizon's Request Is Not Limited As To Product Scope.

Whereas the Second Report & Order clearly indicated that the FCC, based on the record, did not at that time foresee any basis for consideration of any waivers for advanced capability devices,⁹ Verizon -- despite its vendor's experience and capacity as to such devices -- has not proposed making any percentage of its products CableCARD-reliant. Therefore, this request fails even to acknowledge the status of the record in this Docket, or the core purpose of Section 76.1204(a)(1) as discussed in the Second Report & Order, which is to achieve common reliance.¹⁰

V. Verizon's Citations To CableCARD Cost Figures Are Unsupported And Contradicted In The Record.

CEA cites to its own, the FCC's, and the Court of Appeal's discussion of cost figures in this record, as summarized in CEA's Comments, also filed today, on the Charter waiver request.¹¹ All Verizon adds is a declaration by an executive, Mr. Whitton, who professes familiarity with "the design of Verizon's network." This Declaration is conclusory in nature, does not appear to be based on any expertise with respect to chip manufacture or scale economies, and adds nothing of value to the record. Its conclusions are, like cable industry assertions on this subject, contradicted by more specific evidence in the record. Though acknowledging scale economies, it ignores their dynamic effect.

⁹ See *Commercial Availability of Navigation Devices*, Second Report And Order, CS Docket No. 97-80 ¶ 37 (rel. Mar. 17, 2005).

¹⁰ *Id.* at ¶ 2.

¹¹ See CEA Comments on Charter request at 11-12.

VI. Verizon's References To The Need For Its Vendor To Develop New Products Relate To Verizon's Non-Use Of OCAP And Are Irrelevant To CableCARD Reliance.

While Verizon asserts that its network will involve novel technologies and additional services, it provides no evidence that the technology areas cited as novel for Verizon or for its vendors are in any way related to conditional access, or would be affected one way or the other by reliance on CableCARDS.

Verizon itself demonstrates that it considers differences in navigation software to be irrelevant to which conditional access system is used: The entire basis of Verizon's discussion of DCAS, which occupies most of Mr. Whitton's Declaration and large portions of Verizon's request, is Verizon's plea to the FCC to require cable operators to *combine their* own declared approaches to conditional access with that of Verizon. This demonstrates that, even in its own judgment, *Verizon does not see its different approach to navigation software as an impediment to taking the same approach to conditional access.*

VII. The "Diversion Of Resources" Argument Made By Verizon Is No Different And No More Valid Than The Same Argument Made By Cable Operators Since 1998.

Since it cannot cite any reason that is actually related to a "new service" or a technical impediment, Verizon makes the same "diversion of resources" argument that the cable industry has made since 1998. There is nothing in the record to indicate that a waiver should be considered on this basis alone. Indeed, to do so would directly contravene the purpose of both the governing statute and the regulation in question. In particular, Verizon cannot argue persuasively that its vendor lacks the knowledge or resources to build a compliant product in the timeframe set forth by the regulation, *or* that any

diverted resources would have been in any sense relevant to a new competitive benefit other than the fact that Verizon has chosen to enter the MVPD market. As we discuss above, this is not sufficient grounds for consideration of a waiver.

VIII. Whether Or Not Consumer Electronics Manufacturers Develop An Integrated “Two-Way” Solution For Verizon Services Is Irrelevant To The Issues Posed By This Request.

Verizon next asserts that whether or not its devices rely on CableCARDS is not relevant to the successful entry of any CE or IT product. The underlying assumptions on which this argument is based are incorrect.

A. Verizon Ignores The Core Purpose Of The Regulation From Which It Seeks A Waiver.

Verizon’s argument as to the purported lack of interest in the competitive manufacture of “set-top boxes” ignores the CableCARD-reliant products already in the marketplace, and those that have been announced, such as the TiVo S3.¹² There are already millions of CE products in the hands of consumers that can be used directly on a Verizon system if adequately supported by CableCARDS. While noting that it makes CableCARDS available to its subscribers, Verizon makes no claim and presents no data or evidence that the CableCARDS work reliably or that, in the absence of common reliance, these products will work in the future.

B. Verizon Ignores The Value Of Consumer Choice.

Verizon also argues that the “correct” level of consumer demand will be for consumers to order *all* of their services for *every* device in their home. While CEA and

¹² *E.g.*, TiVo is entering production with new models heavily reliant on CableCARDS. *See* CNET Product Review, http://reviews.cnet.com/TiVo_Series3_HD_DVR/4505-6474_7-32065631-5.html?tag=nav.

its members wish Verizon and other MVPDs well in marketing their services, this assumption has never been realistic for cable or any other MVPD providers.¹³ The notion that products offering most but not all of an MVPD's services are without value flies in the face of consumer choice, of devices as well as of services.

C. Verizon Incorrectly Assumes That Competitive Entrants Will Manufacturer Only Televisions.

Verizon assumes, contrary to evidence in the record, that CE and IT manufacturers intend to introduce only CableCARD-reliant televisions, and no other products that might be designed to operate interactively on a Verizon system, provided that reliable conditional access is available via CableCARD. This notion is refuted in CEA's Comments today on Charter's request.¹⁴

IX. Verizon Incorrectly Points To The FCC's Forbearance As To DBS As A Precedent With Respect To Waivers.

Verizon asserts, or at least would like the Commission to declare, that the Commission established a precedent by affording a *waiver* for DBS services. This is simply incorrect. The FCC has made no waiver determinations as to DBS, and made no specific determination, re DBS, as to the second sentence of Section 76.1204(a)(1). Rather, the FCC made an initial decision to *forbear* in addressing DBS in *all* of its regulations that impose technical obligations on MVPD systems.

¹³ Indeed, in the Charter request on which CEA also comments today, Charter admits that the majority of its subscribers do not take set-top boxes *at all*. Charter Communications, Inc. Request for Waiver of 47 C.F.R. § 76.1204(a)(1), CSR-7049-Z at 9 (Aug. 8, 2006).

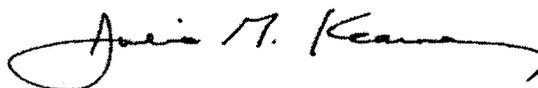
¹⁴ CEA Comments on Charter request at 9.

The FCC determination re DBS was based on a finding of substantial compliance, not on any application to waive or avoid obligations.¹⁵ As the Court of Appeals noted on August 18, no other MVPD has petitioned the FCC to revisit its determination of forbearance as to DBS.

X. CONCLUSION.

For the foregoing reasons, Verizon's waiver request should not be granted by the Commission.

Respectfully submitted,



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¹⁵ 1998 Report and Order at ¶¶ 64-66; 1999 Reconsideration Order at ¶¶ 36-37.

CERTIFICATE OF SERVICE

I do hereby certify that on September 18, 2006 I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on Verizon Request for Waiver of 47 C.F.R. § 76.1204(a)(1) to be served via overnight mail, on the following:

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