

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

In the Matter of)	
)	
Charter Communications, Inc.)	CSR-7049-Z
Request for Waiver of)	
47 C.F.R. § 76.1204(a)(1))	CS Docket No. 97-80

COMMENTS OF TERAYON COMMUNICATIONS SYSTEMS, INC.

Terayon Communications Systems, Inc. (“Terayon”) supports the above-captioned request of Charter Communications, Inc. (“Charter”) for a limited waiver of Section 76.1204(a)(1) of the Commissions rules, 47 C.F.R. § 76.1204(a)(1). Charter has demonstrated that grant of its request to waive the integration ban for certain low-cost, limited functionality set-top boxes would serve the public interest by ensuring the continued availability of inexpensive digital set-top boxes to price-sensitive customers and by expediting Charter’s migration to an all-digital network.

I. TERAYON’S DIGITAL VIDEO SOLUTIONS PRODUCTS

Terayon is a leading provider of digital video solutions (“DVS”) products to cable operators, such as Charter, and, increasingly, to television broadcasters, telecommunications carriers and direct broadcast satellite (DBS) providers. Unlike the set-top boxes that are the subject of Charter’s waiver petition, Terayon’s DVS products are installed at the service provider’s head-end (or equivalent location) or at a remote hub, and not on the subscriber’s premises.

Terayon’s DVS products provide cable, telecommunications and satellite operators exceptional flexibility in managing their digital video content. First, the DVS products support localization of programming. Specifically, they allow video service providers the

capability of providing programming line-ups customized to meet customer needs on a community-by-community basis. Second, the DVS products enable the video service provider to best serve its customers and maximize revenue by inserting local advertising into an otherwise national broadcast feed. Third, the DVS products allow digital video providers to use bandwidth more efficiently through “rate shaping,” which permits the service provider to deliver more services and programming to customers over the same bandwidth. Significantly, Terayon’s DVS innovations can be used only over digital networks. In sum, Terayon’s products substantially enhance the ability of consumers to maximize access to services and programming, customized by the video services provider to best meet consumer demand on a community-by-community basis.

II. GRANT OF CHARTER’S WAIVER REQUEST WILL SERVE THE PUBLIC INTEREST

Terayon supports the Commission’s efforts to increase competition and innovation in the delivery of video services, and supports the Commission’s tentative conclusion that waivers of the integration ban to ensure the availability of low-cost set-top boxes would serve the public interest.¹ Terayon has a substantial interest in this proceeding because, as noted above, the migration to digital programming is essential to support Terayon’s line of DVS products. Grant of Charter’s waiver request will facilitate the spread of digital-capable set-top boxes to all subscribers, not just middle-tier and high-tier users, making the benefits of digital technology, including Terayon’s innovations, more widely available.

More specifically, grant of Charter’s limited request for waiver will ensure the continued availability of truly low-cost set-top boxes that can support digital cable services to

¹ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6813 ¶ 37 (2005) (“2005 Second Report and Order”).

analog and digital televisions alike. Each of the set-top boxes cited in the waiver request currently cost less than \$100.² Terayon agrees with Charter that the application of the integration ban to these low-end digital-capable boxes would significantly add to the costs of these boxes. As Charter explains, “without a waiver, there would no longer be any such thing as a ‘low-cost’ set-top box available from [multichannel video program distributors (“MVPDs”)] that are subject to the integration ban.”³

The Commission already has recognized the benefits of limited waivers of the integration ban, such as Charter requests, including hastening the transition to all-digital networks. As the Commission explained:

achieving consumer choice by establishing a competitive market should not displace a low-cost set-top box option for MVPD subscribers. It is critical to the DTV transition that consumers have access to inexpensive digital set-top boxes that will permit viewing of digital programming on analog television sets both during and after the transition.⁴

The Commission then concluded that, “The availability of low-cost boxes will further the cable industry’s migration to all-digital networks.”⁵ In contrast, applying the integration ban to low-end boxes will impede the proliferation of digital-capable set-top boxes to customers using analogue televisions, and slow the transition to all-digital networks.

Even those subscribers that continue to use analog televisions will experience an immediate upgrade through use of low-end digital-capable set-top boxes. In support of Comcast Corporation’s similar waiver request, electronics manufacturer Panasonic correctly observed:

² Charter Request for Waiver at 5.

³ *Id.* at 12.

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6813 ¶ 37 (2005) (“2005 Second Report and Order”).

⁵ *Id.*

[N]early half of all cable subscribers currently receive analog-only service and directly connect analog cable service to their . . . televisions, without use of a set-top box. For many of these subscribers [waiver of the integration ban] would provide a first-time view of the benefits of going ‘digital,’ both in improved signal quality . . . and in expanded quantity and choice of programming.”⁶

Grant of Charter’s waiver request, and the continued availability of low-cost digital set-top boxes, thus will benefit a substantial class of price-sensitive customers that do not plan to purchase digital televisions and, similarly, would resist the purchase of an expensive set-top box.

There are no countervailing public interest harms that would weigh against grant of the waiver request. Simply stated, waiver of the integration ban for low-end set-top boxes will in no way impede the development of a competitive market for set-top boxes. As Charter points out, “no CE manufacturers apparently have any intent to produce such [low-cost, limited functionality] devices for retail sale.”⁷ In addition, Charter must continue its efforts to develop CableCARD technology, since it will be required to use that technology in all set-top boxes not subject to waiver. Indeed, the Commission has recognized as much, stating:

We are inclined to believe that the provision of such devices by cable operators will not endanger the development of the competitive marketplace envisioned in Section 629, particularly because the more advanced devices offered by cable operators for primary home use will be required to rely on the same CableCARD technology as devices offered at retail by consumer electronics manufacturers.⁸

Considering the substantial public interest benefits and no potential harms, the Commission should grant Charter’s waiver request without delay.

⁶ Comments of the Panasonic Corporation of North America in Support of Comcast Corporation’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1), CS Docket No. 97-80/CSR-7012-Z (filed June 16, 2006).

⁷ Charter Request for Waiver at 10.

⁸ *2005 Second Report and Order*, 20 FCC Rcd at 6813-6814 ¶ 37.

As a final matter, Section 629(c) of the Telecommunications Act of 1996 and Section 76.1207 of the Commission's rules each states that any waivers of the integration ban granted by the Commission "shall be effective for all service providers and products in that category and for all providers of services and products."⁹ The Commission already has determined that the public interest would be served if the integration ban did not apply to low-cost, low-functionality set-top boxes.¹⁰ Thus, if the Commission grants Charter or any other provider of video products or services a waiver of Section 76.1204(a)(1), the Commission shall apply that waiver broadly. Terayon therefore respectfully requests that the Commission obviate the need for further individual waiver requests, and grant relief from the integration ban industry-wide, for all low-cost, low-functionality digital capable set-top boxes.

III. CONCLUDE

For the forgoing reasons, the Commission should grant Charter's request for waiver.

Respectfully submitted,

/s/

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⁹ 47 U.S.C. § 549(c); 47 C.F.R. § 76.1207.

¹⁰ *2005 Second Report and Order*, 20 FCC Rcd at 6813-6814 ¶ 37.

