

**Before the
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's Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1))	CSR-7042-Z
)	

Comments of Sony Electronics Inc.

September 18, 2006

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Comments of Sony Electronics Inc.¹

Sony Electronics Inc. (“SEL”), submits these comments in opposition to Verizon’s Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1) (the “Verizon Waiver Request”).² Because it would apply to all set-top boxes on the Verizon FIOS network, grant of the Verizon Waiver Request would abolish common reliance for devices connected to the Verizon network, thereby denying Verizon’s customers the benefits of this long-standing and fundamental principle. At heart, Verizon FIOS is a direct substitute for traditional cable television services, and the Commission should treat such substitutes evenhandedly. Further, the request is predicated on the development of a hypothetical conditional access technology – “Open DCAS”. If implemented, Open DCAS *might* offer substantial benefits to competitive device manufacturers with limited costs for service providers, and as such deserves serious

¹ Sony Electronics Inc. is a consumer electronics manufacturer that offers CableCARD-ready televisions for sale in the United States.

² *In the Matter of Verizon’s Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1), Request for Waiver, CSR-7042-Z, CS Dkt. No. 97-80 (July 10, 2006).*

attention from the Commission. In light of its highly speculative nature at the present time, however, “Open DCAS” should not serve today as a basis for grant of the Verizon Waiver Request.

I. Common Reliance Offers Consumers Fundamental Benefits; Grant of the Verizon Waiver Request Would Eliminate These Benefits for FIOS Customers

Common reliance has been the cornerstone of the Commission’s efforts to implement Section 629 of the Communication Act. As the Commission stated in its original 1998 order in this docket: “integration is an obstacle to the functioning of a fully competitive market for navigation devices by impeding consumers from switching to devices that become available through retail outlets.”³ In 2005, the Commission affirmed its earlier finding, stating that “[a]t the heart of a robust retail market for navigation devices is the reliance of cable operators on the same security technology and conditional access interface that consumer electronics manufacturers rely on in developing competitive navigation devices.”⁴

Verizon has asked that the Commission eliminate entirely the common reliance requirement for its set-top boxes. Grant of this request would eliminate the consumer benefits of common reliance for FIOS TV users. As explained by the Consumer Electronics Association in previous filings, and echoed by SEL, any diminution of common reliance would both perpetuate the lack of scale economies for separable conditional access technologies,⁵ and compound the

³ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd. 14775, at ¶69 (1998) (“1998 Order”).

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd. 6794, at ¶27 (2005) (“2005 Further Extension Order”).

⁵ See *In the Matter of Comcast Corporation’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, Comments of Consumer Electronics Association on Request for Waiver of 47 C.F.R. § 76.1205(a)(1), CSR-7012-Z, CS Dkt. No. 97-80, at 6-7 (June 15, 2006) (“CEA Comcast Waiver Comments”). See also, *1998 Order* at ¶49. (“The record responding to the NPRM reflects strong advocacy that separating the security function will enhance portability of equipment generally. This requirement will facilitate the development and commercial availability of navigation devices by permitting a larger measure of portability among them, *increasing the market base and facilitating volume production and hence lower costs.*” (emphasis added)).

support problems experienced to date by purchasers of competitive devices.⁶ The same is true for Verizon FIOS as for traditional cable services. In each instance, limitation or elimination of common reliance would place products of competitive device manufacturers at a disadvantage, future purchasers of such products would suffer from unnecessarily high prices due to the diminished cost efficiencies and, with past purchasers, would be less likely to receive the same level of service and support.

II. Verizon Offers No Reason Why The Commission Should Treat Competing Cable Providers Differently With Respect to Common Reliance

Verizon contends that because it is a new entrant into the MVPD market, and because its network employs QAM/IP-based fiber end-to-end rather than traditional hybrid-fiber coaxial cable, the Commission should release FIOS TV from the common reliance requirement that otherwise applies to traditional cable service providers. For all of its market and technological novelty, however, FIOS TV is not “*new or improved* multichannel video programming or other service offered over multichannel video programming systems . . .” within the meaning of the statutory and regulatory exemptions from the navigation device rules.⁷ FIOS TV is a simple substitute for traditional cable television service, and accordingly should be afforded the same treatment as its competitors.

The Verizon Waiver Request provides a notably limited description of the FIOS TV service. It states that it includes “video programming”, including “high-definition and digital channels”.⁸ It offers “creative programming packages” like a “Spanish language package”,⁹ and allows customers to watch video-on-demand.¹⁰ Further, FIOS TV allows Verizon “to

⁶ See CEA Comcast Waiver Comments at 7-10.

⁷ See 47 U.S.C. § 549(c); 47 C.F.R. § 76.1204 (emphasis added).

⁸ Verizon Waiver Request at 8.

⁹ *Id.*

¹⁰ *Id.*

integrate other data applications into the customer's user experience,"¹¹ and may include bundled broadband Internet access.¹² Nowhere, however, does Verizon explain how these features differ from those available through traditional cable services or, more importantly, how a common reliance requirement would place the FIOS TV service at a disadvantage compared to cable competitors that must also comply with the identical regulation.

SEL contends that basic principles of equity and fair regulatory policy require the Commission to treat like services in a like fashion. Technological differences aside, FIOS TV looks and feels like traditional cable service rather than, for example, like a true on-demand IP-based video service like YouTube or Google Video. Accordingly, the Commission should apply the common reliance requirement to FIOS TV in the same manner that it applies this requirement to traditional cable.

III. Verizon's Open DCAS Proposal Merits Investigation, But Remains Too Speculative To Serve As A Basis For a Common Reliance Waiver

In further support for its common reliance waiver request, Verizon proposes a specification for a version of downloadable conditional access ("DCAS") that, it claims, "will provide a long-term solution that will achieve the goals of Section 629, while ending many of the thorny technology debates of the last decade."¹³ The basis of this proposed "Open DCAS" technology should be "open standards and true interoperability . . . a CAS that does not favor one network technology or industry player over another."¹⁴ To succeed, this technology must: 1) "utilize a non-proprietary chipset based on standards developed in an open forum"¹⁵; 2) "use a

¹¹ *Id.* at 8-9.

¹² *See id.* at 25.

¹³ *Id.* at 26.

¹⁴ *Id.*

¹⁵ *Id.* at 27.

transport-agnostic solution such as IP over Ethernet for the return path”¹⁶; 3) have a root trust authority that is “competitively neutral and not beholden to any competitor or any group of competitors”¹⁷; and 4) must be “limited to the hardware and software truly necessary for conditional access support, and must not require providers or consumer electronics manufacturers to implement extraneous, unrelated technologies.”¹⁸

Although not endorsing the Verizon Open DCAS proposal as written, SEL believes that the principles underlying the concept have merit and deserve further study by the Commission. In particular, SEL, like many CE manufacturers, would seriously consider supporting a buy-once, run anywhere technology- and service- agnostic form of conditional access that would permit the development of end-user devices that could be used with the service of any competing MVPD. Further, SEL agrees that any DCAS solution should be free from extraneous implementation requirements that do not directly relate to conditional access.

SEL warns, however, although that the four principles described in the Verizon Waiver Request are perhaps necessary for the development of an Open DCAS technology, they are hardly sufficient. Any such Open DCAS specification should also include, among other things, a means for providing program-related metadata to the end-user device, a standardized interface between the CAS chip and the host, reliable, renewable digital rights management technology, and a defined path to manufacturer self-certification. SEL believes that this non-exclusive list incorporates some of the additional characteristics necessary to ensure development of the robust market for competitive devices envisioned by Section 629.

Moreover, the Commission should not accept the Verizon Open DCAS proposal as a basis for eliminating the common reliance requirement for the FIOS TV service. Notably, the

¹⁶ *Id.* at 28.

¹⁷ *Id.* at 30.

¹⁸ *Id.* at 31.

Commission has already granted one of two extensions of the common reliance deadline based on the promise of DCAS,¹⁹ and the technology is no more a reality today, some eighteen months later, than it was at the time of the decision. At best, the closed, CableLabs version of DCAS will begin deployment over a year from now, with nationwide deployment occurring some time after that, if at all. CableLabs DCAS is relatively well developed and understood. By contrast, the Verizon proposal for Open DCAS is only a theoretical possibility. Successful development and implementation will take years, and if the Commission relies on Open DCAS to excuse Verizon from common reliance, it will deny users of FIOS TV the benefits of this fundamental principle for an indefinite future.

IV. Conclusion

For the reasons set forth herein, Sony Electronics Inc. asks that the Commission deny Verizon's Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1).

Respectfully Submitted,

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¹⁹ See, generally, 2005 Further Extension Order.

CERTIFICATE OF SERVICE

I, Jim Morgan, do hereby certify that on this 18th day of September, 2006, I have served a true and complete copy of the foregoing Comments of Sony Electronics Inc. on Verizon's Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1) by U.S. mail on the following:

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