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

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

To: The Commission

REPLY COMMENTS

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I. Introduction and Summary

In these Reply Comments, the American Cable Association ("ACA") responds to certain arguments made in the Consumer Electronics Association's ("CEA") Comments.[1] Specifically, CEA cites to evidence presented in ACA's *ex parte* filing in the Comcast waiver matter[2] and jumps to the conclusions that (i) Motorola's decision to not modify the DCT-700 to include a CableCARD slot somehow indicates that the set-top box market is non-competitive, and therefore the Commission must deny Charter's waiver request for the DCT-700; and (ii) the Commission should not accept Motorola's stated price differential between the DCT-700 and DCH-100 because Motorola's "dominance would be challenged by competitive entry."[3] In these Reply Comments, ACA shows that CEA's conclusions are incorrect.

American Cable Association. ACA represents nearly 1,100 independent cable companies that serve more than 8 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators that focus on serving smaller markets. More than half of ACA's members serve fewer than 1,000

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[1] *Comments of the Consumer Electronics Association on Charter Communications, Inc. Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7049-Z (September 18, 2006) ("*CEA Comments*").

[2] *See American Cable Association; Notice of Ex Parte Presentation;* CS Docket No. 97-80; CSR-7012-Z (August 31, 2006) ("*ACA Ex Parte*").

[3] *CEA Comments* at 7-8.

subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

II. Contrary to CEA's conclusion, Motorola's decision to not upgrade the DCT-700 warrants a waiver for the device

As shown in ACA's Comments in this matter[4] and in the Comcast waiver matter,[5] failure to grant the waiver requested by Charter and Comcast for the DCT-700 will significantly impede the digital transition in the smaller and rural markets served by ACA's members. This is because ACA members use the DCT-700 to provide economical and innovative digital services, including local VOD, themed tiers, targeted a la carte channels, and digital simulcast, to their subscribers.[6] As ACA's Comments in the Comcast matter and in this matter make clear, the low-priced DCT-700 is driving this digital transition. Accordingly, a waiver is warranted under 47 C.F.R. § 1207, which only requires that the waiver for an integrated set-top box "assist the development or introduction of a new or improved multichannel video programming…service…" Contrary to what seems to be CEA's argument,[7] there is no requirement under Section

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[4] *In the Matter of Charter Communications, Inc.'s Request for Waiver of 47 CFR § 76.1204(a)(1), Comments of the American Cable Association*, CS Docket No. 97-80, CSR-7049-Z (September 18, 2006).

[5] *In the Matter of Comcast Corporation's Request for Waiver of 47 CFR § 76.1204(a)(1), Comments of the American Cable Association*, CS Docket No. 97-80, CSR-7012-Z (June 15, 2006) ("*ACA Comcast Comments*").

[6] *See ACA Comcast Comments* at 3-7.

[7] Regarding Motorola's decision not to upgrade the DCT-700, CEA argues "[t]here is no better evidence of the necessity for the Commission to finally allow Section 76.1204(a)(1) to take full effect. This regulation…is aimed directly at assuring support of competitive entry. That the MSO's dominant vendor can establish a *fait accompli* for the FCC perfectly illustrates the non-competitive condition of the device market…the record shows that the FCC should not degrade the impact of this important regulation now that it is finally poised to become effective…." *CEA Comments* at 8.

1207 or the Commission's orders that the waiver be denied if the set-top box market is not (as CEA claims) competitive.

III. The FCC must consider the price differential between the DCT-700 and DCH-100 in evaluating Charter's and Comcast's waiver requests

In its Comments, CEA references the information in the *ACA Ex Parte* on the price differential between the DCT-700 and DCH-100, and asserts that the Commission "[should not] accept cost comparisons based on unilateral dictates of the very suppliers whose dominance would be challenged by competitive entry." CEA provides no support for its position that the Commission should disregard this critical evidence, and for good reason – there isn't any.

For the purposes of the Charter and Comcast waiver requests, there is one core issue: Will the requested waiver "assist the development or introduction of a new or improved multichannel video programming…service…"?[8] The market share of the manufacturer pricing the DCH-100 is irrelevant to this inquiry.

Further, CEA's argument makes no sense. Even if Motorola were "dominant," the company would have no incentive to exaggerate the price of the DCH-100 set-top box - overpricing would only <u>encourage</u> competitive entry because competitive suppliers could provide a similar box at a lower price and thereby take market share from Motorola.

In short, the FCC must consider the evidence on the substantial price differential between the DCT-700 and DCH-100 when evaluating the Comcast and Charter waiver requests.

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[8] 47 C.F.R. § 1207.

IV. Conclusion

In its Comments, CEA unsuccessfully attempts to read non-existent requirements into Section 1207 of the Commission's rules, and to discredit the critical evidence presented in the *ACA Ex Parte*. The Commission should disregard CEA's baseless arguments.

Respectfully submitted,

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Certificate of Service

I, Megan Petrulis, paralegal in the offices of Cinnamon Mueller, certify that a copy of the American Cable Association's Reply Comments in support of Charter Communications, Inc.'s Request for Waiver of 47 CFR § 76.1204(a)(1) was sent United States Postal Service on September 28, 2006 to be delivered to the persons listed below for delivery via First Class Mail, postage prepaid.

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