

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Charter Communications, Inc. Request for  
Waiver of 47 C.F.R. § 76.1204(a)(1)

CSR-7049-Z  
CS Docket No. 97-80

**REPLY COMMENTS OF CHARTER COMMUNICATIONS, INC.**

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In accordance with the Commission's Public Notice in this proceeding issued on August 29, 2006, Charter Communications, Inc. ("Charter") submits these reply comments in response to the seven sets of comments in favor<sup>1</sup> and the four sets of comments opposed<sup>2</sup> to Charter's request for waiver.<sup>3</sup>

**SUMMARY**

In its 2005 *Second Report and Order*, the Commission found that the availability of low-cost set-top boxes is critical to the digital transition and would further the development of the new and improved services that can be delivered by cable's migration to all-digital networks. In support of Charter's waiver request, experts in the digital transition agree that such low-cost devices are essential to keep cable services flowing to the millions of analog devices that CE has sold (and continues to sell) to consumers. Even the few opponents of Charter's waiver request

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<sup>1</sup> Supporting comments were filed by the American Cable Association, BigBand Networks, Harmonic, Motorola, National Cable & Telecommunications Association, Pace, and Terayon.

<sup>2</sup> Opposing comments were filed by the Consumer Electronics Association, Sony, TiVo, and the "IT Commenters" (Sony, HP, Intel and Dell). It should be noted that while CEA has opposed the waiver, individual CEA members such as Panasonic and Thompson have supported the similar waiver request filed by Comcast. See *Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7012-Z, CS Docket No. 97-80 ("Comcast Request").

<sup>3</sup> *Charter Communications Inc. Request for Wavier of 47 C.F.R. § 79.1204(a)(1)*, Request for Waiver, CSR-7012-Z, (filed July 14, 2006) ("Charter Request").

concede that the Commission should ensure the availability of low-cost cable navigation devices, but their opposition would leave consumers without any actual low-cost boxes to lease or buy. Some of these opponents claim they have an interest in building competitive low-cost devices for consumers, even though they have never stepped up in the past and make no commitments now. Charter is eager for alternative suppliers to enter the navigation device market, but when it sought out new vendors in 2004, only Pace (a supporter of this waiver) responded. But regardless, the record plainly shows that no one – not cable’s vendors, and not other CE manufacturers – can build dis-integrated set-top boxes at a low price comparable to the devices for which Charter seeks waiver.

The Commission also tentatively concluded that application of the integration ban to low-cost devices would not provide any incremental benefit to consumers. The stated purpose of “common reliance” is to ensure that cable operators use enough CableCARDS to have sufficient incentive to support them. But even if the waiver were granted and the ban were still applied to all other Charter devices, the record here shows that Charter would still have at least 20 times the number of CableCARDS deployed in its leased devices for every one CableCARD issued for a retail device—a far greater and costlier insurance policy than can possibly be considered necessary. Application of the ban to low-cost devices therefore would produce no marginal benefit, either to the competitive market or to consumers who would be paying up to 100% more for devices that offer no new functionality.

But application of the ban to low-cost devices would inflict substantial harm on consumers, especially consumers in small and rural markets: it would delay Charter from being able to offer digital simulcast to an additional 2 million homes in 2007 alone, derailing Charter’s ambition to move nearly all of its systems to digital simulcast by 2009 in concert with the DTV

transition; it would saddle consumers who only want a low-end set-top box with the burden of paying a new annual tax of hundreds of millions of dollars—just for the theoretical purpose of reducing by a few cents the rent for a \$1.50/month CableCARD that plugs into a \$7000 HDTV; and it would undermine the Commission’s objectives of technological and competitive neutrality by imposing these burdens on Charter but not Charter’s much larger DBS competitors, even though DirecTV has now rejected the competitive-device model and moved almost entirely to leasing proprietary, integrated devices. Moreover, it would do these things at the worst possible time: just as the cable industry and the federal government are trying to ensure that all consumers have the converter devices they need for the digital transition, and just before cable operators will be in a position to deploy a much cheaper, technologically-superior downloadable security (DCAS) solution.

The opponents of Charter’s waiver have failed to rebut any of the Commission’s prior conclusions or Charter’s request with credible evidence. On this record, it is clear that the Charter request is exactly the type of waiver that the Commission invited in the *Second Report and Order*, and is exactly the type of waiver that Congress instructed the Commission to grant.

**I. The CE Opponents of the Waiver Failed to Rebut the Commission’s Prior Findings that a Low-Cost Waiver Is Critical to the Digital Transition.**

Congress adopted Section 629 for the benefit of consumers, not the consumer electronics industry. Charter’s request has not been opposed by consumers. Opposition comes instead from certain sectors of the multi-billion dollar CE industry that are asking the Commission to force consumers to pay an extraordinarily inefficient equipment tax of up to 100% on low-cost set-top boxes, just to reduce by a few cents the \$1.50 lease cost of CableCARDS that plug into high-end HDTVs like Pioneer’s \$7000 60-inch Flat-Panel Plasma HDTV. This request comes from some of the very the same companies that will still sell 8.4 million analog TVs to U.S. consumers in

2006, knowing that they will be obsolete in two years when analog broadcasting ceases.<sup>4</sup> These ongoing analog TV sales outnumber all of the set-top boxes that the entire cable industry places into service each year nationwide.

Although the Commission has concluded that the integration ban in general may help consumers, that does not mean that the ban should be applied in every conceivable instance even when doing so would hurt consumers and delay the delivery of advanced digital services, and even in instances where doing so is not necessary to advance the stated objectives of the rule. But that is exactly what the CE opponents of Charter's limited waiver request are asking the Commission to do.

Ironically, one of the very reasons why grant of a low-cost set-top box waiver is so important for consumers is the fact that the CE industry has continued to flood the market with analog TVs. The CE industry has sold at least 130 million analog TVs to consumers that are still in cable consumer homes. Right now, more than half of those sets are not attached to a set-top box or another digital-to-analog converter that would allow them to continue receiving cable or retransmitted broadcast channels when analog transmission is sunset on February 17, 2009.<sup>5</sup> These television manufacturers have not produced a single low-cost set-top box that will solve the problem that their prior and ongoing sale of analog TVs has created. Grant of Charter's

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<sup>4</sup> According to CEA, in 2006 alone CE will sell US consumers 8.4 million analog TV sets for over \$850 million. CEA website, [http://www.ce.org/Press/CEA\\_Pubs/2007.asp](http://www.ce.org/Press/CEA_Pubs/2007.asp).

<sup>5</sup> See Terayon Comments at 2, quoting 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) (“[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.”)

waiver is an essential part of keeping cable services flowing to these customers' analog TVs as cable systems migrate to digital.<sup>6</sup>

The CE opponents' only response to this point is Sony's peculiar suggestion that "this rationale no longer exists, given that Congress has [now] set a hard deadline for the over-the-air transition."<sup>7</sup> But the Commission made clear that the public interest required the availability of low-cost cable set-top boxes not just to get to a transition date, but also thereafter, given the prevalence of analog TVs remaining in consumer homes: "It is critical to the DTV transition that consumers have access to inexpensive digital set-top boxes that will permit the viewing of digital programming on analog television sets *both during and after* the transition."<sup>8</sup> The CE opponents have done nothing to rebut this Commission finding.

Nor do any of the opposing comments present any serious rebuttal to the Commission's observation that the continued "availability of low-cost boxes will further the cable industry's migration to all-digital networks, thereby freeing up spectrum and increasing service offerings such as high-definition television." Instead, the record now only confirms the Commission's finding through the comments filed by experts in the digital transition (BigBand, Harmonic and Terayon) in support of the Charter waiver. As BigBand explained:

the millions of analog TVs in consumer homes today cannot access digital programming on their own; people with such TVs must either obtain a digital set-top box or replace each of their analog TVs with CableCARD-enabled digital televisions. Since the least expensive CableCARD-enabled devices on the market are in the price range of \$1000, as a practical matter a cable operator must get a set-top box into nearly every home in order to deliver the benefits of an all-digital

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<sup>6</sup> CEA claims that consumers could find other solutions to receive digital over-the-air broadcast stations on analog TVs using an off-air digital-to-analog converter. CEA Comments at 4-5. However, such devices would not deliver digitally retransmitted broadcast signals or other digital cable programming.

<sup>7</sup> Sony Comments at 2.

<sup>8</sup> *Implementation of Section 304 of the Telecommunications Act of the Telecommunications Act of 1996 – Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd. 6794, ¶ 37 (rel. March 17, 2005) ("*Second Report and Order*") (emphasis added).

network to consumers. To get a set-top box in every home, cable operators must be able to offer a very low-cost device to their more budget-minded customers. For low-cost boxes to remain low-cost, the Charter waiver must be granted.<sup>9</sup>

Charter's commitment to its digital transition is proven. Charter was the first cable operator in the nation to launch digital simulcast, in July 2004 for its Long Beach, California system. Multichannel News awarded Charter its 2004 Innovator Award for Technology for this "pioneering achievement."<sup>10</sup> But to move all of its systems to digital simulcast, and eventually make the further leap to all-digital networks, Charter's customers must have access to low-cost navigation devices. As Multichannel News wrote:

Eyeing the long term, digital simulcast is the first step toward an all-digital network, which would enable operators to reclaim huge amounts of spectrum for additional HDTV channels, video-on-demand services or broadband Internet services. But the all-digital network would require every subscriber, even analog homes without a set-top, to install of low-scale digital box to continue receiving cable service. It's an issue the industry continues to wrestle with: How to get a low cost box, perhaps as cheap as \$50, into homes that have rejected cable set-tops in the past.<sup>11</sup>

Thus, just as BigBand plainly explained, it is beyond reasonable debate that if low-cost set-top boxes were to disappear as a result of the integration ban, cable's attempt to move to all-digital networks would be dealt a severe blow – contravening Congress' instructions that the Commission avoid regulations under Section 629 that would slow the introduction of new or improved MVPD services,<sup>12</sup> regulations that "could have the effect of freezing or chilling the development of new technologies and services,"<sup>13</sup> and regulations that would delay or impede "the deployment ... of advanced telecommunications capability to all Americans" or impose

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<sup>9</sup> BigBand Comments at 3.

<sup>10</sup> Charter Subs Benefit From All-Digital Summit, MULTICHANNEL NEWS (Dec. 13, 2004).

<sup>11</sup> *Id.*

<sup>12</sup> Section 629(c), 47 U.S.C. § 549(c).

<sup>13</sup> Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. 104-230, 104th Cong., 2d Sess. at 181 (1996) (providing instructions to the Commission for the development of Section 629 regulations).

“barriers to infrastructure investment.”<sup>14</sup> Thus, even TiVo concedes, as it must, that a “reasonable reading of the *Second Report and Order* ... demonstrates that the Commission intended to entertain waivers for *some* low-cost, limited capability devices,”<sup>15</sup> and that the Commission established a “goal of ensuring that consumers have a low-cost set-top box option.”<sup>16</sup> In conceding that this “goal” exists, it is clear that the CE opponents have failed to refute any of the Commission’s purposes of that goal, including the purposes of assuring that low-cost boxes remain available to consumers to further the DTV transition and cable operators’ migrations to all-digital networks.

## **II. Denial of Charter’s Waiver Request Would Result in the Elimination of the “Low Cost” Cable Navigation Device Option for Consumers.**

As noted above, TiVo concedes that the Commission has established a “goal of ensuring that consumers have a low-cost set-top box option.”<sup>17</sup> But if TiVo, CEA and Sony prevailed in their arguments to defeat the Comcast and Charter waivers, that Commission goal would be defeated, because there would no longer be any low-cost set-top boxes available to cable subscribers. As Pace explained:

if Charter’s waiver is denied, *no one* will be able to produce “low cost” set-top boxes – not Pace for cable operators, and not other CE manufacturers for retail sale. Absent a waiver, until the deployment of downloadable security, it will be technically and economically impossible for any manufacturer to build a compliant set-top box that could be priced anywhere close to the amount of today’s low-cost devices for which Charter seeks waiver. The unavoidable fact is that the combined cost of a “dis-integrated” host set-top box ... and a separate CableCARD is significantly greater than our integrated low-cost devices. Denial

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<sup>14</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (codified in notes under 47 U.S.C. § 157) (directing the Commission “to encourage the deployment ... of advanced telecommunications capability to all Americans ... by utilizing, in a manner consistent with the public interest, convenience, and necessity ... regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”).

<sup>15</sup> TiVo Comments at 3 (emphasis added).

<sup>16</sup> TiVo Comments at 5.

<sup>17</sup> TiVo Comments at 5.

of the waiver request would therefore destroy, not enhance, the market for low-cost set-top boxes.<sup>18</sup>

The CE opponents appear to make three arguments to suggest that low-cost devices could remain available even if the waivers were denied at least in part. First, they argue that the cost of implementing the integration ban would be, in their opinion, significantly lower than is reported in the sworn statement in Charter's pleading. Second, they suggest that they intend to make their own low-cost set-top boxes available to consumers. Finally, they propose that the Commission could instead permit only the availability of "low-cost" "one-way" integrated set-top boxes in lieu of granting the waiver. None of these arguments are availing.

**A. The Cost of Switching to CableCARD-Equipped Devices is Not a Matter of Speculative Debate; It is the Lowest Price Increase that Any Potential Vendor Would Charge for Usable Non-Integrated Devices Available on July 1, 2007.**

CEA argues that "Charter relies on cost statistics that are outdated and have been refuted."<sup>19</sup> This is nonsense. Charter is not relying on "statistics" – it is relying on what its vendors have very recently told it they will charge, which, absent relief from the ban, is what Charter would have to pay. At this stage, it is irrelevant what one party or another's theoretical model might suppose as to what it might cost to build a CableCARD-equipped set-top box;<sup>20</sup> what is relevant is the actual real-world price that potential vendors will charge cable operators for this equipment. Charter's sworn pleading reporting a cost increase in the range of \$72-93 – which, for example, would raise Charter's cost for today's DCT-700s by more than 100% – is

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<sup>18</sup> Pace Comments at 4-5 (emphasis original).

<sup>19</sup> CEA Comments at 11.

<sup>20</sup> In any event, CEA does not cite to any new evidence demonstrating that the costs of the ban would be less. And the Commission has never found that cable's evidence was "refuted" by CEA's, which is largely gathered from persons who have never built a set-top box. On the contrary, the Commission recently explained to the D.C. Circuit that it has been "quite candid" that the costs to consumers would be significant. *See* COMM. DAILY at 6 (May 12, 2006) (quoting FCC attorney Joseph Palmore).

based upon the latest 2006 statements from its vendors as to what they will charge Charter for new CableCARD devices if the integration ban takes effect.<sup>21</sup>

CEA notes that Armstrong recently reported to the FCC that Motorola had decided not to build DCT-700 devices with CableCARD slots, and that therefore if the waiver were not granted Armstrong would instead have to purchase a DCH-100 for \$190, a \$110 price increase from what it pays now for the integrated DCT-700. But rather than acknowledging the obvious real-world problem this poses for cable operators, CEA responds, “That the MSOs’ dominant vendor can establish a *fait accompli* for the FCC perfectly illustrates the non-competitive condition of the device market.”<sup>22</sup> But it is the Commission, and not Motorola, that is really in control of this decision market-wide – the elimination of the DCT-700 and similar devices would result not from Motorola’s whim, but from, as Pace explained, the “unavoidable fact is that the combined cost of a “dis-integrated” host set-top box ... and a separate CableCARD is significantly greater than our integrated low-cost devices.”<sup>23</sup> Motorola’s understandable business decision not to make DCT-700s with CableCARD slots wouldn’t matter if *anyone else* were willing to make CableCARD-equipped set-top boxes with the same or better functionalities as the DCT-700 for a comparable price. *If anyone actually were – Sony, TiVo or otherwise – Charter would be buying from them and there would be no need for this waiver request.*

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<sup>21</sup> The Charter Request does cite to the cost evidence submitted by NCTA in 2002, but, for avoidance of doubt, Charter clarifies here that it did so only after recently confirming from its vendors that the average impact per box on Charter would be within the same range previously reported by NCTA.

<sup>22</sup> CEA Comments at 8.

<sup>23</sup> Pace Comments at 5.

Finally, CEA argues that the costs of CableCARD-equipped limited-function devices would come down over time, or would be offset by other long-term consumer benefits.<sup>24</sup> But even if true,<sup>25</sup> that would provide no relief for consumers who want a low-cost set-top box in the early years after implementation of the integration ban. Denial of the waiver would impose a tax of approximately \$18 million per year on Charter's most price-sensitive customers and hundreds of millions of dollars on consumers nationwide.<sup>26</sup> There is no "market" that is going to catch up and benefit these consumers—who are only trying to continue using the analog televisions that CE sold to them.

**B. There is No Evidence that New Suppliers of Low-Cost Set-Top Boxes Will Emerge Before July 2007.**

Even CEA concedes that grant of Charter's waiver request might be appropriate if additional CE and IT manufacturers did not intend to build "directly comparable and competitive" low-cost navigation devices.<sup>27</sup> On cue, Sony and TiVo state that they would themselves like to make low-cost set-top boxes.

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<sup>24</sup> CEA distorts the relevance of economies of scale to the public interest analysis for a low-cost waiver. In the *First Report and Order*, the Commission, in effect, determined first that the integration ban would benefit consumers even at existing costs, and that the benefits would further increase as costs decline over time. The Commission did not, as CEA now tries to suggest, find that it was unnecessary to impose the integration ban on all devices but that it would do so anyway just for the purpose of fueling economies of scale. It would be absurd for the Commission to deliberately place an economic burden on lower-income customers for the sole purpose of bringing down slightly the CableCARD cost for higher-income consumers wishing to use them in \$7000 HDTVs. It would make no more sense for the government to require every person in America to get a Pacemaker in order to make such devices more affordable for the people who actually need them.

<sup>25</sup> It is one thing to suppose eventual cost reductions as a mitigating factor for HD/DVRs, for which a \$72-93 price increase is only a fraction of the total cost of the equipment; it is quite another to expect a \$72-93 price increase for low-cost set-top boxes, which would double their total cost, would be proportionately reduced over time by economies of scale.

<sup>26</sup> See *In the Matter of National Cable & Telecommunications Association's Request for Waiver of 47 C.F.R. § 79.1204(a)(1)*, Request for Waiver, CSR-\_\_\_\_\_, at 8 (filed Aug. 16, 2006) ("NCTA Waiver Request") ("the direct cost to the cable industry to implement the CableCARD would exceed \$500 million per year"). The total cost to Charter to implement the integration ban on all of its devices would be approximately \$40 million per year.

<sup>27</sup> CEA Comments at 8-9.

There is no real evidence that Sony, TiVo or other opponents of the waiver plan to make the types of sub-\$100 set-top boxes of the type the Commission deemed most appropriate for waiver. The set-tops for which Charter seeks waiver are single tuner standard definition boxes with no DVR and no HD capability. These boxes are designed that way because HD output, multiple tuners, and DVRs are costly additions, and the point is to produce an entry-level device with the lowest practicable cost to lure analog customers to digital. By contrast, every single “plug and play” device that CE has built and that retailers market has HD output.<sup>28</sup> These HDTVs typically cost between \$1700 and \$7000.<sup>29</sup> The cheapest “set-top” CE produces for retail is a newly-released CableCARD-equipped multi-tuner TiVo series 3 HD/DVR, which costs \$800 plus \$13/month subscription fees.<sup>30</sup> TiVo is certainly not likely to build a “plug and play” device without a DVR. CEA itself says that CE manufacturers would want to add a DVR and home networking features to its “lower-cost” navigation devices<sup>31</sup>—which just shows they are not planning to market a box that meets the FCC’s own parameters for a low-cost set-top box.

Second, not one of the opponents of the waiver now expressing interest in low-cost boxes has made any commitment to supplying them, either to Charter or at retail.<sup>32</sup> They present instead the most non-committal statements possible, as they did in opposing Comcast’s request

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<sup>28</sup> Plug and play has consistently been celebrated by CE as an HD technology. *See, e.g.*, CS Docket 97-80, Consumer Electronic Industry Comments at 2-3 (Mar. 28, 2003) (“this historic agreement will allow all Americans to receive high definition television (HDTV) over cable on a national basis without a set-top box.”)

<sup>29</sup> *See* Exhibit A (chart listing CableCARD-ready devices available at Best Buy and Circuit City websites on September 22, 2006).

<sup>30</sup> *Id.*

<sup>31</sup> CEA Comments at 6.

<sup>32</sup> A manufacturer wanting to sell an equivalent to the Pace box at retail would have a choice. If they make a low-cost box of very limited functionality, the consumer would need to be educated that the entry-level box is not portable to other platforms. A nationally-portable box would need to include an OCAP stack—the middleware that allows different set-tops to interoperate on different headends.

for waiver.<sup>33</sup> Any manufacturer who was really interested in selling into this market would have approached Charter, Best Buy, or Circuit City by now. If they really would make such a commitment, Charter has shown that it is interested in procuring devices from alternative suppliers. Charter issued an RFI for low-cost boxes in connection with its launch of digital simulcast in Long Beach in 2004. But only Pace responded and stepped up as a committed second source for low-cost boxes. Charter is therefore faced with the practical reality of three suppliers for low-end boxes: Pace, SA, and Motorola. Charter cannot sell services on the hope that CE's vague comments here will transform into a sudden supply by July 2007 of devices that CE manufacturers have failed to build or to express any genuine interest in for years.<sup>34</sup>

CEA then suggests that the reason they have not built devices already is because cable operators have refused to grant the necessary licenses.<sup>35</sup> This assertion is obviously not true, given the Pace example,<sup>36</sup> and is simply thrown in to complicate the otherwise simple issue of the need for a low-cost waiver. For purposes of this docket, it is clear that CE has not demonstrated that it could, much less would, build a sub-\$100 set-top box/CableCARD

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<sup>33</sup> *Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7012-Z, CS Docket No. 97-80, Letter from Adam Goldberg, Pioneer North America, to Marlene Dortch, FCC (Sept. 12, 2006) ("Pioneer may very well consider marketing devices with similar capability to Comcast's 'low-cost, limited-capability integrated boxes' . . . , if it were only possible . . . "); *Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7012-Z, CS Docket No. 97-80, Letter from Jim Morgan, Sony Electronics Inc. to Marlene Dortch (Aug. 4, 2006) ("Sony . . . sees a substantial competitive opportunity in the [low-end] device market . . .").

<sup>34</sup> Indeed, it is because CE manufacturers have not stepped up make such devices that Charter has not offered any fixed expiration date for its waiver. It is absurd for CE to fault Charter for not volunteering a time frame for a limited waiver when CE is in control of what they deliver to the market.

<sup>35</sup> CEA completely distorts history and basic principles of technology when it states that "the cable industry . . . has continuously refused to license CE and IT manufacturers to make *any* non-OCAP product with interactive features comparable to those of the DCT-700 and other non-OCAP products listed in Charter's request." CEA Comments at 9. Charter readily licensed Pace to make these products, and it would welcome more vendors. What CE is apparently complaining about is that non-OCAP devices are limited to particular MSO systems, whereas OCAP is needed if a CE manufacturer wishes to make a portable device, which is more suitable for a national retail strategy. But this distinction is not some arbitrary cable business strategy. OCAP is what makes the devices portable across systems; this is a technical issue, not a legal or business one.

<sup>36</sup> See Pace Comments at 4 ("it is possible today for additional CE manufacturers to enter this market and produce devices with all of the functionalities of the devices for which Charter seeks waiver. This is, in fact, exactly what Pace has done.").

combination. The simple fact for now is that Charter's only real-world choices for getting low-cost devices to its consumers on July 1, 2007 is to continue to buy them from Pace, SA, and Motorola, and even those options will disappear if the Commission fails to grant the requested waiver. Charter's waiver request therefore must be granted if consumers are to have any choice of a low-cost cable-ready navigation device.

**C. TiVo's Proposal to Limit the Waiver to Non-Existent "One-Way" Low-Cost Devices is a Sham.**

As a third and last attempt to argue that low-cost boxes could remain available to consumers even if the waiver as requested is denied, TiVo suggests that a waiver be limited to "one-way" services—that is, a box that prevents consumers from seeing Charter's electronic program guide, including any on-demand channels it may offer.<sup>37</sup> But there are no one-way, low-cost devices available from any vendor for Charter to buy, and no one plans to make them. Therefore, a "grant" of such a waiver is really a denial that would fail to ensure that low-cost cable devices would remain available to consumers. Moreover, it is absurd to suggest that these non-existent boxes are what the Commission had in mind when it described the type of limited-function devices for which waiver would be most appropriate. Instead, given the Commission's goal of ensuring actual availability, it can only reasonably be assumed that the Commission had real devices in mind. Thus, when the Commission described devices that do not contain "personal video recording ("PVR"), high-definition, broadband Internet access, multiple tuner, or other similar advanced capabilities," it was not writing in the abstract; it was describing the very boxes for which Charter now seeks waiver.

Second, as demonstrated above, it is simply not true that CE manufacturers cannot produce two-way devices, just as Pace does today, and just as Samsung is building now for retail

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<sup>37</sup> TiVo Comments at 5.

delivery. CE manufacturers were given the design freedom to add their own guides to “plug and play” products. TiVo and other CE manufacturers have done so. It makes no sense to prohibit a cable operator from offering its own digital guide on a cable set-top, when the point of such *navigation* devices is to help customers navigate the world of digital channels. That an electronic cable program guide is “two-way” should be no surprise. The only set-top boxes that exist, and the very devices described as most appropriate for waiver in the *Second Report and Order*, are inherently two-way.

Finally, TiVo completely misapprehends the Commission’s presumed purpose of limiting the functionality of devices granted waivers. TiVo and other CE opponents assume that the purpose of the functionality cut-off is to assure that the waiver would only apply to the types of devices that the CE industry also makes. If anything, this is backwards. If TiVo and Sony did make the kinds of devices for which a waiver is sought, at a low price, there would be no need for a waiver. Moreover, Congress prohibited the Commission from trying to help foster a retail market by restricting the attractiveness of what MSOs could offer,<sup>38</sup> and it directed the Commission not to freeze or chill the development of new technologies and services.<sup>39</sup>

Because the Commission’s decision on the Comcast and Charter waivers will determine whether or not “low cost” cable devices will remain available to consumers, the CE opposition ultimately depends on a conclusion that the mere availability of low-cost integrated set-top boxes will on balance hurt consumers. But as the Commission previously found, the opposite is true. Consumers who are not interested in or who cannot afford an \$800 Series 3 TiVo or a \$1700-\$7000 HDTV need low-cost set-top boxes to receive digital cable services. It is highly

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<sup>38</sup> Section 629(a), 47 U.S.C. § 549(a).

<sup>39</sup> Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. 104-230, 104th Cong., 2d Sess. at 181 (1996) (providing instructions to the Commission for the development of Section 629 regulations).

disingenuous for the CE opponents to claim they are trying to help consumers by taking away the less expensive devices and “enabling” them to replace them with much more expensive devices that these CE opponents just happen to sell.

The purpose of this proceeding is not for CEA to decide what it thinks is best for its members. It is for the Commission to decide what is best for consumers. The CE opponents of Charter’s waiver would give only two choices to cable customers with limited budgets for television programming: pay double for set-top box that adds no new functionality, for the theoretical purpose of indirectly subsidizing much more expensive advanced devices; or forgo the benefits of digital cable. Thus, if Charter’s waiver is denied, the integration ban would, as the D.C. Circuit said in 2000, do “nothing more than deny the most cost-effective product choice to consumers—an ironic outcome for an order implementing ‘one of the most pro-consumer, pro-competitive provisions of the Telecom Act.’”<sup>40</sup> This is not what Congress had in mind when it adopted a statute that sought to help consumers by *expanding* their options for navigation device equipment. Instead, this is precisely the type of situation for which Congress required the Commission to grant a waiver, and Charter requested precisely the type of waiver the Commission invited and told the courts it was “favorably inclined” to grant.

### **III. CEA Is Obviously Wrong in Asserting that Charter “Fails To Point To A Single New Or Improved Service That Would Be Facilitated By The Granting Of This Request.”**

Because it is clear, as demonstrated above, that a waiver would further Charter’s transition to digital simulcast and all-digital networks, CEA is obviously wrong in asserting that Charter “fails to point to a single new or improved service that would be facilitated by the

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<sup>40</sup> *General Instrument v. FCC*, 213 F.3d 724, 732 (D.C. Cir. 2000) (emphasis added).

granting of this request.”<sup>41</sup> Charter’s request devotes two full pages to describing the new and improved digital cable services that would be facilitated by grant of the requested waiver.<sup>42</sup> If the waiver is granted, Charter’s cable spectrum could be put to better use: more high-definition (HD) television, more on-demand programming, higher broadband speeds, improved digital telephone services, and new features that integrate features across digital platforms. The comments filed by BigBand, Harmonic, Motorola, Pace and Terayon describe additional services and benefits that will be delivered to consumers through digital simulcast and all-digital networks, and conclude that “the benefits of a digital network to cable operators and to cable customers are enormous.”<sup>43</sup>

But it is not simply the case that grant of the waiver would further the digital transition; denial of the waiver would dramatically slow and in some cases derail it, especially in Charter’s many small and rural systems. Charter is very different from other MSOs with a similar number of total subscribers; it operates a far more scattered collection of smaller systems, many in rural areas. When Charter acquired these systems, they typically had older plant with significantly less bandwidth than larger-market systems, and therefore could not fully support all of the

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<sup>41</sup> CEA Comments at 4.

<sup>42</sup> See Charter Request at 12-13.

<sup>43</sup> BigBand Comments at 1; *see also* BigBand Comments at 2 (“Digital networks can improve video quality ... Digital systems can offer more HDTV, more on-demand content [and] provide consumers with greater control over their viewing choices, with additional tiers and parental controls. They can offer faster data services (such as through bonded channels) ... interactive features, richer integration across media for enhanced services, and other advanced video and data services which accelerate consumer adoption of more digital services and more digital devices.”); Motorola Comments at 3-5 (by speeding migration to all-digital networks grant of waiver would spur more “HD, expanded broadband offerings, and other digital services,” and that “failure to approve the waiver could slow the development and implantation of downloadable security.”); Pace Comments at 3 (same); Terayon Comments at 1-2 (“Grant of Charter’s waiver request will facilitate the spread of digital,” which in turn will allow cable operators to use Terayon’s DVS products that provide “operators exceptional flexibility in managing their digital video content” and “allow video service providers the capability of providing programming line-ups customized to meet customer needs on a community-by-community basis.”); Harmonic Comments at 3 (grant of waiver would facilitate Charter’s deployment of digital simulcast, and “simulcasting not only improves video quality, content security, service reliability, and transport costs, but also enables all-digital bandwidth savings because reclaimed analog spectrum can be used for more, faster high-speed data rates and other advanced video and data services.”).

features of digital cable or broadband Internet access. Facing vigorous competition from DBS, Charter invested \$10.5 billion since 2000, much of it through borrowing, to bring broadband and digital upgrades to these markets. Competition remains fierce: the DBS penetration rate in the Charter region remains significantly higher than the cable industry average, and now telephone companies are overbuilding Charter's systems.

These system characteristics – many small, rural and scattered systems – in conjunction with Charter's significant debt obligations, places significant capital constraints on its ability to fund new projects.<sup>44</sup> While Charter intends to take the next step to digital simulcasting, that step is on average more expensive per customer in small systems because of fixed costs at the headend. Spending millions of dollars to purchase higher-cost card-slotted set-top boxes would consume Charter's limited capital without adding any new functionality or competitiveness to its service. If this waiver is granted, Charter plans to launch digital simulcast in nearly all of its systems by 2009, in tandem with the DTV transition. However, if Charter is required to spend more of its capital budget on higher-cost set-top boxes to replace going forward the devices for which it seeks waiver, it would have to reduce new simulcast deployments that would have made all-digital service available to approximately 2 million additional homes in 2007 alone, and significant portions of Charter's market, especially small and rural systems, would remain without simulcast at the time of the DTV transition.

Most small operators are in a similar quandary. The particular importance of a low-cost waiver for small and rural systems was explained in the comments of American Cable Association in support of Charter's waiver. ACA represents nearly 1,100 small cable companies, more than half of which serve fewer than 1,000 subscribers. ACA explained that the "impact of

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<sup>44</sup> See Charter Request, Exhibits I and J.

the integration ban will be even worse than previously believed” for smaller systems.<sup>45</sup> The Commission has already determined that a low-cost waiver would in general further cable operators’ migration to all-digital networks. It is clear that such waiver is even more critical to that transition for consumers in small and rural markets.

Therefore, CEA is clearly wrong in asserting that Charter “fails to point to a single new or improved service that would be facilitated by the granting of this request.” The new and improved digital cable, broadband and telephone services that small-system operators seek to deliver are unquestionably the types of service for which Congress intended to be unburdened by the Commission’s Section 629 regulations.

#### **IV. Grant of the Requested Waiver Will Not Undermine Common Reliance.**

TiVo argues that grant of the waiver would undermine the Commission’s objective of “common reliance” because, says TiVo, “Charter’s request encompasses the vast majority of set-top boxes it distributes to its subscribers.”<sup>46</sup> This is false. Charter’s sworn waiver request made clear that the devices not covered by the waiver (its HD, DVR, and HD/DVR devices) “would collectively encompass more than half of all new Charter set-tops placed into service immediately after July 1, 2007.”<sup>47</sup> Thus, the low-cost waiver as requested would apply to less than half of our new set-tops in the second half of 2007, and that percentage will decline over time as HD and DVRs become must-have features among increasing numbers of consumers. That is not the “vast majority” of our set-tops.

The Commission previously tentatively concluded that a waiver in such circumstances would not undermine common reliance, explaining that:

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<sup>45</sup> ACA Comments at 2.

<sup>46</sup> TiVo Comments at 3.

<sup>47</sup> Charter Request at 8.

We are inclined to believe that 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.<sup>48</sup>

That would be the case here. Even if this waiver is granted, Charter would expect to place into service hundreds of thousands of HD and/or DVR set-tops that are not covered by this waiver, which would be subject to any applicable CableCARD requirement. Those set-tops would be provided to Charter's highest-revenue, best customers. Keeping these customers satisfied with the operation of their CableCARD-equipped device every month when their cable bill arrives is already more than enough incentive for Charter to ensure that the CableCARDS provided to those customers and Charter's 15,000 customers with CableCARDS in purchased devices work.<sup>49</sup> Even with the waiver, Charter would have approximately 20-25 CableCARDS in leased devices for every CableCARD issued for a CE DTV or TiVo. Requiring cable to provide more insurance above and beyond that ratio would obviously be overkill and would provide no incremental benefit to consumers or the objective of common reliance; it would be an unnecessary and punitive condition imposed uniquely on the cable industry. And it is particularly clear, under these facts, the Charter Request does not, as asserted by Sony, ask for Charter to be "released from its common reliance obligations."<sup>50</sup>

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<sup>48</sup> *Second Report and Order*, ¶ 37.

<sup>49</sup> Even without any integration ban, Charter already has every incentive to keep these customers happy with their choice of navigation device, because a dissatisfied customer could decide to switch to a competitor. It is nonsensical for CE to suggest that Charter would want to risk losing a customer's entire account – which often includes a bundle of digital cable, telephone and broadband service – just for the purpose of trying to steer them to few-dollar-per-month lease for a set-top box on which Charter does not profit.

<sup>50</sup> Sony Comments at 3.

Nor would the requested waiver disfavor retail solutions.<sup>51</sup> Charter will continue to offer separable security in the form of CableCARDS that plug into a wide variety of “digital cable ready” retail devices quite unlike the set-tops that cable uses. By contrast, as demonstrated in Charter’s Request, not one of our MVPD competitors provides that level of retail support.<sup>52</sup> CEA did nothing to rebut the fact that its members now have far more opportunity to build devices for Charter than for DBS, which does not support interoperable, separable security and which now only allows its selected OEM vendors to build its navigation devices.<sup>53</sup> This limited waiver to offer consumers the option of a low-end set-top that these CE manufacturers themselves won’t build is not hostile to retail—it is filling a void that the CE industry has otherwise left vacant.

**V. CE Fails to Present Any Reasoned Justification for Departure from the Commission’s Policy of Competitive Neutrality.**

CEA, Sony and TiVo generally ignored Charter’s important showing that application of the integration ban even to Charter’s low-cost set-top boxes would undermine the federal policy interest in competitive neutrality between cable and DBS, given that DBS operators today support fewer retail options than cable and that they nonetheless plan on continuing to offer low-cost integrated set-top boxes to their customers after July 1, 2007.

CEA argues that the D.C. Circuit “dismissed this argument,”<sup>54</sup> but that is plainly not true. The *Second Report and Order* had recognized the danger to the public interest from disparate

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<sup>51</sup> Even though the Commission explicitly invited low-cost waivers in March 2005, none of the public-company opponents of the waiver have identified the placement or absence of CableCARDS in such devices as having any material consequence or risk to their investors in their 10-Ks filed with the SEC. Nor has CEA’s reports on strategic imperatives for the CE industry highlighted this issue as one of material import. COMMUNICATIONS DAILY January 06, 2006.

<sup>52</sup> See Charter Request at 14-17; see also NCTA Request at 24-33.

<sup>53</sup> *Id.*

<sup>54</sup> CEA Comments at 12.

imposition of the integration ban, noting that “avoiding market-based distortions with respect to DBS as a competitor to cable is ... an important consideration” but deferring that issue to some future proceeding.<sup>55</sup> The Court merely said that the Commission had the discretion at the time of its March 2005 decision to defer consideration of this issue on the grounds that the record was insufficiently developed (which the Court said “is hardly surprising, since neither the *Further Notice* nor the *Extension Order* sought comment on the DBS exemption or on the relationship between developments in the DBS and cable markets.”).<sup>56</sup> But more than a year and a half after the Commission recognized that this “important” issue should be addressed in a future proceeding, it still has not done so. It would be unreasonable for the Commission to defer this issue again, at least with respect to the competitive disparity in applying the ban on cable’s low-cost devices but not on DBS, now that Charter has put that issue and relevant record evidence squarely before it.

The CE opponents’ only other response to this issue is Sony’s statements that “the proper policy goal of the Commission should be to encourage competition in both the MVPD service and device markets,” and that the Commission’s promotion of MVPD competition should not come at the expense of its promotion of competition for navigation devices. But Sony apparently has no problem in urging the Commission to do the same thing in reverse – to promote competition for navigation devices to the maximum extent possible, even in ways that undermine the Commission’s promotion of MVPD competition, or hurt consumers, or delay the delivery of advanced services. Nothing in the Act suggests that the Commission’s Section 629 regulations should take precedence over other fundamental goals of the Act. In fact, Congress directed that it is the Commission’s Section 629 regulations that must give way to the extent they would

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<sup>55</sup> *Second Report and Order*, ¶ 38.

<sup>56</sup> *Charter Comm. Inc. and Advance/Newhouse Comm. v. FCC*, slip. op. at 20 (D.C. Cir. Aug. 18, 2006).

impede the development of new or improved MVPD services;<sup>57</sup> or jeopardize security of MVPD services;<sup>58</sup> or prohibit MVPDs from offering their own navigation devices to consumers;<sup>59</sup> or delay or impede “the deployment ... of advanced telecommunications capability to all Americans” or impose “barriers to infrastructure investment.”<sup>60</sup>

## **VI. CE’s Reckless, Overbroad and Often Irrelevant Charges Are Contradicted by the Record.**

In response to a very narrow waiver petition, the CE opponents have filed broad oppositions that veer far from the limited scope of Charter’s request.<sup>61</sup> Some of these parties lodge vague charges against Charter (or sometimes, the entire cable industry) that are not explained, substantiated, or sworn. To set the record straight, Charter provides the table on the next page below to compare these CE allegations to the facts in the record.

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<sup>57</sup> Section 629(c), 47 U.S.C. § 549(c) (“The Commission shall waive a regulation adopted under subsection (a) of this section for a limited time upon an appropriate showing ... that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products.”)

<sup>58</sup> Section 629(b), 47 U.S.C. § 549(b) (“The Commission shall not prescribe regulations under subsection (a) of this section which would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.”).

<sup>59</sup> Section 629(a), 47 U.S.C. § 549(a) (“Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, to consumers, if the system operator’s charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.”).

<sup>60</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (codified in notes under 47 U.S.C. § 157) (directing the Commission “to encourage the deployment ... of advanced telecommunications capability to all Americans ... by utilizing, in a manner consistent with the public interest, convenience, and necessity ... regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”)

<sup>61</sup> The IT Commenters’ discussion of the cable industry’s DCAS program is irrelevant to the Commission’s consideration of Charter’s waiver request. Charter’s statement that the imposition of the ban would slow DCAS is supported in the record by Motorola, which is working on both projects. For purposes of responding to the IT Commenters’ alleged concerns about DCAS, Charter refers the Commission to NCTA’s reply comments filed in CS Docket 97-80 on February 6, 2006.

## CE Versus Reality

<b>CE Claim:</b>	<b>RECORD FACT:</b>
<p>“Charter’s request encompasses the vast majority of [its] set-top boxes.”<sup>62</sup>  <b>False</b></p>	<p>The waiver would apply to less than half of Charter’s new set-tops.<sup>63</sup></p>
<p>Charter asked to be “released from its common reliance obligations.”<sup>64</sup>  <b>False</b></p>	<p>Even with this waiver, Charter would have 20-25 CableCARDS in leased boxes for every 1 CableCARD in a retail device.<sup>65</sup></p>
<p>Charter “fails to point to a single new or improved service that would be facilitated by the granting of this request.”<sup>66</sup>  <b>False</b></p>	<p>The waiver would enable launch of digital simulcast in nearly all markets by 2009; higher digital penetration; more HD, VOD, broadband, digital telephone and other advanced services.<sup>67</sup>                      Panasonic agrees that waiver is needed “to promote consumers’ smoothest and speediest possible transition to digital TV.”<sup>68</sup></p>
<p>The Commission can still assure availability of low-cost set-top boxes even if it limits waiver to one-way low-cost devices.<sup>69</sup>  <b>False</b></p>	<p>No such devices exist. Grant only of a “one-way” waiver would eliminate the last low-cost consumer options for digital transition cable set-tops.<sup>70</sup></p>
<p>Sony, TiVo and other CE manufacturers want to build retail, low-cost devices.  <b>False</b></p>	<p>The Pace Comments confirm that it is not possible for any vendor to produce CableCARD-equipped devices at low-cost price point.<sup>71</sup> None are available today and the CE opponents make no commitments to do so. The least expensive CableCARD “set-top” that CE retails is a TiVo Series 3 for \$800 plus \$13 per month, and the others are mostly \$1700-7000 HDTVs.</p>
<p>Charter refuses to license.<sup>72</sup>  <b>False</b></p>	<p>Charter sought out additional vendors in 2004, and only Pace responded. Pace is now licensed to build low-cost set tops.<sup>73</sup></p>
<p>CE Cannot Build Two-Way Devices with VOD and Access to Cable Guide.  <b>False</b></p>	<p>Samsung has built a certified two-way DTV with VOD and access to cable guide that should be available at retail in late ’06.<sup>74</sup> CEA members Panasonic, LG, Thomson, Toshiba, and others and are also now licensed to develop two-way retail products.</p>
<p>The cable industry missed the July 1, 2000 deadline for PODs.  <b>False</b></p>	<p>Cable met that deadline.<sup>75</sup> Cable then went beyond its obligations by developing the next generation of CableCARDS in time for CE’s rollout of UDCPs, and then multi-stream CableCARDS in 2006.</p>
<p>A waiver would harm deployed cable-ready TVs.  <b>False</b></p>	<p>Charter provides CableCARDS to every customer who wants one, and will continue to do so—as required by rule. Charter has also given free lab time to CE companies to support retail products.<sup>76</sup></p>
<p>Every new cable box must have “common reliance” to ensure CableCARDS work.  <b>False</b></p>	<p>Not one complaint has been filed against Charter’s support and compliance, despite specific Commission invitation and procedures established to investigate and remedy CableCARD problems.<sup>77</sup></p>
<p>Every new cable set-top must use a CableCARD to provide economies of scale.  <b>False</b></p>	<p>At most, denying waiver would shave pennies off the \$1.50 lease cost of CableCARDS used in \$800-\$7,000 CE devices. That minor savings does not nearly offset the \$18 million Charter’s customers would incur each year for (formerly) low-cost set-tops that provide no new functionality.</p>
<p>Commission can deny waiver for cable but ignore changes in DBS equipment market.  <b>False</b></p>	<p>DirecTV has now rejected competitive retail model and moved to leased integrated set-tops.<sup>78</sup> DirecTV has twice as many customers as Charter and sits on CEA’s Video Board.</p>

## VII. CONCLUSION

For the foregoing reasons, Charter's request for waiver should be granted.

Respectfully submitted,



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September 28, 2006

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<sup>62</sup> TiVo Comments at 3.

<sup>63</sup> Charter Request at 8.

<sup>64</sup> Sony Comments at 3.

<sup>65</sup> Charter Reply at 20.

<sup>66</sup> CEA Comments at 4.

<sup>67</sup> Charter Request at 12-13; Charter Reply at Section II; BigBand Comments at 1-2; Harmonic Comments at 3; Motorola Comments at 3-5; Pace Comments at 3; Terayon Comments at 1-2.

<sup>68</sup> CS Docket 97-80, CSR-7012-Z, Panasonic ex parte at 1 (July 24, 2006).

<sup>69</sup> TiVo Comments at 5.

<sup>70</sup> Pace Comments at 4-5; Charter Reply at 14.

<sup>71</sup> Pace Comments at 4-5.

<sup>72</sup> CEA Comments at 9.

<sup>73</sup> Pace Comments at 4; Charter Reply at 12.

<sup>74</sup> Samsung and Time Warner Ready OCAP-STB Tests for Fall, CONSUMER ELEC. DAILY (Jul. 20, 2006), p. 1.

<sup>75</sup> CS Docket 97-80, FNPRM and Declaratory Ruling, FCC 00-341, ¶¶ 7, 29 (rel. Sept. 18, 2000).

<sup>76</sup> CS Docket 97-80, NCTA ex parte (Charter Communications FCC Cable Card Report) (Sept. 25, 2006). Charter has actively supported CE manufacturers, retail promotions of CableCARDS, troubleshooting new technology issues for CE companies, free lab time for CE companies in Charter's NOC, development agreements to work with CE manufacturer's on two-way DTVs, and technical support for CableCARDS. CS Docket 97-80, Charter ex parte at 1-2 (Dec. 7, 2004) (describing above-mentioned support for CableCARDS and CE manufacturers); NCTA ex parte at 1-14 and Exhibit A-3 to A-5 (Jun. 29, 2006) (providing extensive point-by-point rebuttal to CE allegations regarding CableCARD support).

<sup>77</sup> *Second Report and Order*, ¶ 39.

<sup>78</sup> Charter Request at 17.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Charter Communications, Inc. Request for  
Waiver of 47 C.F.R. § 76.1204(a)(1)

CSR-7049-Z  
CS Docket No. 97-80

**DECLARATION OF MARWAN FAWAZ**

1. My name is Marwan Fawaz. I am the Chief Technical Officer of Charter Communications, Inc. I am familiar with Charter's plans for deployment of digital simulcast and its utilization of the set-top boxes for which Charter seeks waiver of the integration ban.

2. I have read the forgoing Reply Comments of Charter Communications, Inc., and declare under penalty of perjury that the facts contained therein and in this Declaration are true and correct to the best of my knowledge, information, and belief.



Marwan Fawaz  
Chief Technical Officer  
Charter Communications, Inc.  
Executed on September 28, 2006

**Exhibit A**

**CableCARD-ready Devices Available from Best Buy and Circuit City Websites  
on September 22, 2006**

**Digital Cable Ready (CableCARD) Devices Available at  
BestBuy.com, September 22, 2006**

<b>PRODUCT NAME</b>	<b>MODEL</b>	<b>PRICE</b>
LG 50" Plasma HDTV	50PC1DR	\$3,199.99
LG 42" Flat-Panel LCD HDTV	42LB1DR	\$2,099.99
Panasonic - 58" Flat-Panel Plasma HDTV	TH-58PX600U	\$5,499.98
Panasonic - 50" Flat-Panel Plasma HDTV	TH-50PX600U	\$3,599.98
Panasonic - 42" Flat-Panel Plasma HDTV	TH-42PX600U	\$2,599.98
Pioneer - PureVision 60" Flat-Panel Plasma HDTV	PDP-6071HD	\$6,999.99
Samsung - 71" 1080p Rear-Projection DLP HDTV	HLS7178W	\$4,799.98
Samsung - 50" Flat-Panel Plasma HDTV	HP-S5073	\$3,699.98
Samsung - 46" 1080p Flat-Panel LCD HDTV	LNS4696	\$4,099.98
Samsung - 40" 1080p Flat-Panel LCD HDTV	LNS4096	\$3,299.98
Sony-BRAVIA 40" Widescreen LCD HDTV	KDLV40XBRI	\$2,999.98
Sony-BRAVIA 32" Widescreen LCD HDTV	KDLV32XBR1	\$1,999.99
Sony-BRAVIA 26" Widescreen LCD HDTV	KDLV26XBR1	\$1,699.99
Toshiba - TheaterWide 50" DLP HDTV	50HM66	\$1,799.99
TiVo Series3 Dual Tuner HD DVR w/ 300-Hour Capacity	TCD648250B	\$799.99 plus \$12.95/mo

**Digital Cable Ready (CableCARD) Devices Available at  
CircuitCity.com, September 22, 2006**

<b>PRODUCT NAME</b>	<b>MODEL</b>	<b>PRICE</b>
Hitachi 55" Plasma HDTV	55HDS69	\$3,849.99
Hitachi 42" Plasma HDTV	42HDS69	\$2,039.99
Mitsubishi 65" 1080p DLP Projection HDTV	WD-Y65	\$2,999.99
Mitsubishi 57" 1080p DLP Projection HDTV	WD-Y57	\$2,399.99
RCA Scenium 50" DLP HDTV	M50WH187	\$1,699.99
Sony BRAVIA 40" LCD HDTV	KDL-V40XBR1	\$2,999.99
Sony BRAVIA 32" LCD HDTV	KDL-V32XBR1	\$1,999.99
TiVo Series3 Dual Tuner HD DVR w/ 300- Hour Capacity	TCD648250B	\$799.99 plus \$12.95/mo