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

In the Matter of	)	
	)	
National Cable & Telecommunication	)	CSR 7056-Z
Association's 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 the National Cable and Telecommunications Association ("NCTA") for a limited waiver of Section 76.1204(a)(1) of the Commissions rules, 47 C.F.R. § 76.1204(a)(1). NCTA has demonstrated that grant of its request to waive the integration ban for cable operators until those cable operators deploy downloadable security or until December 31, 2009, whichever is earlier, would serve the public interest by saving consumers money and by expediting the deployment of downloadable security, the migration to all-digital networks, and cable company provision of new services, such a as voice and broadband, over their systems.

I. TERAYON'S DIGITAL VIDEO SOLUTIONS PRODUCTS

Terayon is a leading provider of digital video solutions ("DVS") products to cable operators and, increasingly, to television broadcasters, telecommunications carriers and direct broadcast satellite (DBS) providers. Unlike the set-top boxes that are the subject of NCTA'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 NCTA'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 "utilizing downloadable security is likely to facilitate the development of a competitive navigation device market, aid in the interoperability of a variety of digital devices and thereby further the DTV transition."[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 NCTA's waiver request will facilitate the transition to all-digital networks, making the benefits of digital technology, including Terayon's innovations, more widely available.

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[1] *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6813 ¶ 31 (2005) ("*2005 Second Report and Order*").

NCTA's request for waiver is wholly consistent with the Commission's 2005 Order, in which the Commission extended the availability of integrated set-top boxes until July 2007. The Commission expressly found that "[i]f downloadable security proves feasible, but cannot be implemented by July 1, 2007, we will consider a further extension of the deadline."[2] NCTA confirms in its Petition that this is the case today, stating that, "It is now clear that downloadable security is indeed feasible, but that it cannot be implemented by July 2007."[3]

Moreover, the Commission already has recognized the benefits of limited waivers of the integration ban, such as NCTA requests. As the Commission explained in its 2005 Order:

> If the ban were to go into effect in 2006, this would, as a practical matter, impede the development of a less expensive and more flexible system for both protecting system security and creating a consumer product interface, as resources would be diverted from producing a downloadable security system to physical separation of the security element from set-top boxes. We believe that the potential benefit of a common security technology with significantly reduced costs justifies a limited extension of the deadline for phase-out of integration devices.[4]

The Commission's rationale in its 2005 Order remains in force today, and has taken on greater urgency as cable companies stand at the brink of deploying new downloadable security technology.

Several factors demonstrate that grant of NCTA's waiver request would serve the public interest. As noted above, grant of the waiver will promote the transition to all-digital programming and the many benefits that such programming brings. In order to comply with the pending integration ban, however, the cable industry and set-top box vendors already have diverted substantial resources to developing CableCARD-capable set-top boxes, and away from

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[2] *Id.* at 6813 ¶ 36.

[3] NCTA Request for Waiver at 9.

[4] *2005 Second Report and Order*, 20 FCC Rcd at 6810 ¶ 31.

innovations that would enhance their consumers' experience. As NCTA explained "adding the CableCARD slot and the CableCARD add absolutely no additional features, functions or benefit to the consumer who leases such a device."[5] Even worse, CableCARD technology likely will be completely outmoded by downloadable security solutions before the end of the decade. As such, implementation of the integration band already has come at great cost with little countervailing consumer benefits.

Furthermore, it is the consumers that can least afford such a superfluous purchase as an interim set-top box solution that stand to lose the most from enforcement of the integration ban, and who would benefit most from grant of NCTA's waiver request. NCTA estimates that enabling leased navigation devices to work with CableCARDs would add approximately $72-93 per box.[6] Thus, imposition of the integration ban in July 2007 would threaten to remove from the market any set-top boxes that could reasonably be considered "low cost," due to the substantial expense of implementing CableCARD technology. In contrast, waiving the integration ban will promote the proliferation of inexpensive digital-capable boxes, and the accompanying benefits of digital cable, to a greater percentage consumers.[7]

Grant of NCTA's waiver request also would serve the public interest by facilitating the provisioning by cable companies of additional services that benefit consumers, such as voice and broadband services. Roll-out of voice telephony and broadband services is capital intensive, and each dollar spent on interim implementation of the integration ban translates into less investment in these new services. Granting NCTA's request for waiver to spur new and improved services over cable companies' systems would promote the pro-

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[5] NCTA Request for Waiver at 8.

[6] *Id.* at 7 & n.17.

[7] *Id.* at 16-17.

competitive and pro-consumer goals of the Communications Act, and would be fully consistent with Congress's direction to the Commission in for granting waivers of the integration ban.[8]

III. CONCLUDE

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

Respectfully submitted,

/s/

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[8] 47 U.S.C. § 549(c) (providing that waivers are warranted to assist in the "development or introduction of a new or improved mulichannel video programming *or other service . . .*" (emphasis added)).

CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 30th day of November, 2006, I caused to be served a true copy of the foregoing "Comments of Terayon Communications Systems, Inc.," by first class mail, postage pre-paid (or as otherwise indicated) upon the following:

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