

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	CSR-7056-Z
NCTA's Request for Waiver of)	
the Set-Top Box Integration Ban,)	CS Docket No. 97-80
<u>47 C.F.R. § 76.1204(a)(1)</u>)	

COMMENTS OF MOTOROLA, INC.

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November 30, 2006

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Motorola, Inc. ("Motorola") hereby submits these comments in response to the Commission's Public Notice in the above-captioned proceedings.¹ The National Cable & Telecommunications Association ("NCTA") has requested that the Commission waive the integration ban for all cable operators until their deployment of downloadable security or December 31, 2009, whichever is earlier ("Waiver Request").² Motorola strongly supports this Waiver Request and urges the Commission to give it prompt approval for the reasons set forth below.

Imposing the costly CableCARD requirement on cable operators makes no sense when downloadable security -- which everyone (including the Commission) agrees is a far superior option -- has been proven to be technically feasible and is being diligently pursued by cable

¹ See *In the Matter of NCTA's Request for Waiver of the Set-Top Box Integration Ban*, 47 C.F.R. § 76.1204(a)(1), Public Notice, CSR-7056-Z, CS Dkt. No. 97-80, DA 06-2257 (*rel.* Oct. 31, 2006).

² See *In the Matter of NCTA's Request for Waiver of the Set-Top Box Integration Ban*, 47 C.F.R. § 76.1204(a)(1), Request for Waiver, CS Dkt. No. 97-80, CSR-7056-Z (Aug. 16, 2006).

operators, Motorola, and others, all of whom are firmly committed to the earliest possible implementation.

NCTA notes in its Waiver Request that adding CableCARD capabilities significantly increases the cost of a set-top box, while adding no beneficial features.³ The Commission has acknowledged the significant operator and consumer costs associated with the CableCARD and recognized that downloadable security will provide a more cost-effective, technologically-superior solution to the CableCARD that will facilitate the digital transition, among other consumer benefits.⁴ In light of these clear public interest benefits, the Commission specifically invited parties to seek a further deferral of the integration ban based on the feasibility of downloadable security.⁵ NCTA has demonstrated the feasibility of downloadable security.⁶ The

³ See Waiver Request at 7-8 (“The cable industry has estimated that the re-engineering required to enable their leased devices to work with CableCARDs would add approximately \$72-93 per box – which translates into two or three dollars more in monthly lease charges to consumers – and that the direct cost to the cable industry to implement the CableCARD would exceed \$500 million per year.”). Verizon has noted similar cost increases in its set-top box waiver application. See *In the Matter of Verizon’s Petition for Waiver of the Set-Top Box Integration Ban*, 47 C.F.R. § 76.1204(a)(1), Petition for Waiver, CS Dkt. No. 97-80, DA 06-1734, at 15 and Whitton Decl. ¶ 12 (Aug. 8, 2006) (“Verizon Petition”) (noting that CableCARD requirement would add upwards of \$95 to the wholesale price of the device -- \$25 for CableCARD-components in the set-top box and an additional \$50-70 for the CableCARD itself).

⁴ See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report & Order, 20 FCC Rcd. 6794 ¶ 31 (2005) (“2005 Integration Ban Order”) (“If the ban were to go into effect [before downloadable security could be deployed], 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.”). See also *id.* (noting that 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”); *id.* (noting that downloadable security “would not require the potentially costly complete separation of the physical security element”).

⁵ See *id.* ¶ 36.

⁶ See Waiver Request at 9-11; see also NCTA Report on Downloadable Security, filed in CS Dkt. No. 97-80 (Nov. 30, 2005); NCTA Reply Comments on Downloadable Security, filed in CS Dkt. No. 97-80 (Feb. 6, 2006). Verizon has also made plain its strong preference for deploying downloadable security in lieu of the CableCARD, (footnote continued...)

Commission should now make good on its prior statements regarding extending the integration ban deadline.

In contrast, failure to approve NCTA's Waiver Request would slow the development and implementation of the superior downloadable security solution. The cable industry is expending considerable resources to bring the Downloadable Conditional Access System ("DCAS") to market as quickly as possible. NCTA detailed in its Waiver Request the substantial progress that is being made on DCAS, including the demonstration of DCAS at the Consumer Electronics Show, the signing of Samsung, LG, Panasonic, and others to the DCAS license, and construction of facilities to produce security keys for the DCAS chips, among other things.⁷

Motorola has been participating in this cable industry-led DCAS effort and has devoted considerable resources to the development of downloadable security solutions.⁸ Motorola has also participated in demonstrations of the DCAS technology for Commission staff and at the Consumer Electronics Show and NCTA National Show. Motorola anticipates committing substantial, additional resources to the DCAS effort in the future, and believes the length of the NCTA Waiver Request -- expiring no later than December 31, 2009 -- is entirely reasonable given the considerable technical, development, implementation, and testing work that still needs to be done.

(...footnote continued)

noting, among other things, that "a downloadable software security implementation has the potential to be cheaper and easier to implement and is also more convenient for consumers . . . [and] also simplifies customer installation and reduces the equipment that a customer must purchase or lease." Verizon Petition at 16.

⁷ See Waiver Request at 9-10 (noting significant investment in and progress on downloadable security over the last year).

⁸ See, e.g., Motorola Comments, filed in CSR-7049-Z, at 5 (Sept. 18, 2006) (noting that Motorola has dedicated over 80,000 man-hours to downloadable security development and testing); Motorola Comments, filed in CSR-7012-Z, at 4-5 (June 15, 2006) (same).

Notwithstanding the progress that has already been made on DCAS, there is now a risk that this important effort will be substantially delayed as limited manpower and other resources are diverted away from downloadable security to support CableCARD-related efforts. Motorola, for example, relies on the same personnel and testing facilities for downloadable security, CableCARD, and other projects, and cannot accelerate work on new CableCARD-related initiatives without compromising work on downloadable security. Motorola is concerned that reallocating resources in this way will slow progress on downloadable security and deny cable operators, cable customers, and CE manufacturers the many public interest benefits associated with downloadable security. The continued focus on obsolete separable security solutions like the CableCARD also delays the development of further innovation and competitive new features with respect to cable equipment -- all without any clear public interest benefit. The risk and harms of such delay will only increase if the Commission does not act promptly to grant the Waiver Request.⁹

At the same time, Motorola also emphasizes that grant of the Waiver Request will in no way affect its ongoing support for CableCARDS. Motorola worked proactively with the cable industry to develop CableCARD technology and manufactures CableCARDS in quantities that are being used today with a wide variety of CableCARD-enabled devices. Motorola is committed to continue to manufacture and provide CableCARDS throughout any waiver period

⁹ The Commission expressed concerns about the diversion of resources away from downloadable security in its *2005 Integration Ban Order*, see *2005 Integration Ban Order* ¶ 31, and there are similar risks present if CableCARD alternatives must be developed for every integrated set-top box. See Verizon Petition at 4 (“In sum, a waiver would benefit consumers by avoiding the need to develop a costly, complex, inefficient and ultimately superfluous physical separation solution that will only delay the provision of important new services.”). See also Letter from Senator Ted Stevens and Congressmen Joe Barton and Fred Upton to FCC Chairman Kevin Martin at 2 (Nov. 27, 2006) (“Forcing a costly deployment of an outdated technology while another that offers more to consumers is just over the horizon is *not* good public policy.” (emphasis added)).

to ensure that these CableCARD-enabled products continue to be supported. Moreover, granting the Waiver Request will in no way affect the ability of CE manufacturers to continue to develop new and innovative CableCARD-enabled devices.

Grant of the Waiver Request would also be fully consistent with Section 629(c) of the Communications Act -- the provision of the navigation device statute under which the waiver was filed -- which provides for approval of waivers where “necessary to assist the development or introduction of a new or improved multichannel video programming or other service.”¹⁰

Specifically, by granting the waiver, the Commission would enable cable operators to allocate resources that might otherwise be spent on costly and technically inferior CableCARD implementations toward the development and deployment of new and innovative digital programming services, such as HDTV and video-on-demand, the continued rollout of voice services, and further investment in high-speed Internet services -- all to the benefit of consumers.¹¹ By contrast, denial of the waiver would contravene Congress’s requirement that, in implementing Section 629, the Commission “avoid actions which would have the effect of freezing or chilling the development of new technologies and services.”¹²

* * *

¹⁰ See Waiver Request at 13 (citing 47 U.S.C. § 549(c)).

¹¹ See *id.* at 13-24. Verizon underscored similar pro-consumer benefits in its waiver request. See, e.g., Verizon Petition at 11 (noting that imposition of the integration ban would “create a chilling effect on Verizon’s ability to expand and develop the FiOS TV service and have a corresponding negative impact on Verizon’s ability to bring more competition and innovation to the MVPD market”); *id.* at 17 (noting that building a CableCARD set-top box “will inevitably divert and unnecessarily tie up resources that would otherwise be available either for investment to speed fiber deployment or for research and development into additional services that Verizon could offer over the FiOS network”).

¹² Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. 104-230 at 181 (1996).

In sum, Motorola is concerned that regulations requiring the allocation of additional resources to CableCARD efforts will deny cable operators, their customers, and consumer electronics manufacturers the significant and universally acknowledged public interest benefits associated with downloadable security and generally detract from further innovation with respect to digital cable equipment and services -- all without any clear public interest benefit. As NCTA noted, "grant of the waiver is necessary to avoid these costs and permit cable operators to dedicate resources that would otherwise be wasted on a costly interim implementation of the integration ban to help facilitate the rollout of DCAS and other new and advanced services that consumers highly value."¹³

In light of the foregoing, Motorola respectfully asks that the Commission give prompt approval to the Waiver Request.

Respectfully submitted,

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¹³ Waiver Request at 12-13.

CERTIFICATE OF SERVICE

I, Fran Gunn, hereby certify that, on November 30, 2006, copies of the attached Comments of Motorola, Inc. were served via regular mail or electronic mail, on the following:

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