

**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)	
)	
Requests for Waiver of 47 C.F.R. § 76.1204(a)(1))	
)	
Cable & Communications Corporation)	CSR-7144-Z
Mid-Rivers Telephone Cooperative, Inc.)	CSR-7145-Z
En-Touch Systems, Inc.)	CSR-7183-Z
City of Tacoma d/b/a Click! Network)	CSR-7141-Z

**Comments of the Consumer Electronics Association
On Requests for Waiver Filed by C&CC, Mid-Rivers, En-Touch, & Click**

May 3, 2007

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The Consumer Electronics Association (“CEA”) respectfully submits these comments in opposition to requests for waiver of 47 C.F.R. § 76.1204(a)(1), filed by Cable & Communications Corporation (“C&CC”), Mid-Rivers Telephone Cooperative, Inc. (“Mid-Rivers”), En-Touch Systems, Inc. (“En-Touch”), and the City of Tacoma, d/b/a Click! Network (“Click”) (collectively, “Petitioners”). As CEA has pointed out, granting waivers to small cable operators will be no long-term favor – it would aggravate the very circumstances that have subjected them to the dictates of the two dominant set-top box vendors, and that led the Congress to require, and the Commission to mandate, the regulation from which a waiver is sought.¹ Having granted years of delay, granting

¹ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, CSR- 7109-Z - 7112, CSR-7114-Z, CSR-7115-Z, CSR-7117, Comments of CEA on the NPG Cable, Inc., Atlantic Broadband Finance, LLC, Orange Broadband Operating Company LLC and Carolina Broadband, LLC, Armstrong Utilities, Inc., The World Company, d/b/a Sunflower Broadband, Cequel

exemptions now would only entrench the *status quo* that Congress instructed the Commission to address.

Petitioners and their equipment vendors have now had nine years' notice of the common reliance rule, including two extensions of the effective date.² The Court of Appeals has twice rejected challenges to this rule.³ The only extenuating circumstance for the Petitioners is their failure to demand compliant hardware from vendors, and vendors' failure to supply it. The Commission has never granted waivers on this basis and should not do so now.

Granting waivers would not give these Petitioners any greater influence over the dominant equipment vendors. *Denying* waivers may be the only way finally to require vendors to support separable security in a way that allows for national portability. Indeed, denying these and the avalanche of similar petitions now appears essential to guard against *regression* by ensuring that any follow-on system is at least as open, compatible, and nationally portable as CableCARDs themselves -- and, through common reliance, much better supported by the cable industry. CEA incorporates by reference its *ex parte* letter of April 24, 2007, addressing this issue.⁴

Customers of small cable operators, in particular, should not be denied the benefits of competition in navigation devices. It is a fact of record that several vendors have expressed interest in low-cost, limited functionality devices that would rely on

Communications, LLC d/b/a Suddenlik Communications, Bresnan Communications, LLC Requests for Waiver of 47 C.F.R. § 76.1204(a)(1) at 1 (Mar. 12, 2007). These Comments are incorporated by reference.

² The Commission promulgated Section 76.1204 in 1998, and subsequently extended the effective date of the common reliance rule twice, most recently to July 1, 2007.

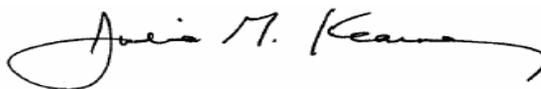
³ *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2000); *Charter Communs., Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006).

⁴ *Ex Parte* Letter from the Consumer Electronics Association, CS Docket No. 97-80, CSR-7131-Z at 9-10 (Apr. 24, 2007).

CableCARDS.⁵ TiVo and manufacturers of Digital Cable Ready television receivers, though hampered by the lack of common reliance, have been seeking a foothold in the market for competitive navigation devices. If small and rural operators can continue to foreclose a local market for these devices, their subscribers will continue to be effectively locked into leasing devices from the operators, while customers of larger operators reap the benefits of device innovation and competition, as fostered by separable security and common reliance. It was the intention of the Congress for competition to be of benefit to *all* subscribers.

Furthering the digital transition does not require sacrificing competition in navigation devices; the opposite is true. The time has come for the Commission to enforce its rules, and finally to fulfill Congress's mandate to *assure, in its regulations*, the competitive availability of navigation devices at retail.

Respectfully submitted,



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⁵ See, Memorandum and Order, Denying Comcast's Request for Waiver of Section 76.1204(a)(1), CS Docket No. 97-80, CSR-7012-Z at 6 ¶ 10 (Jan. 10, 2007) ("Pioneer North America asserts, however, that it would market low-cost devices if it could offer them with two-way capabilities. Sony also contends that it 'wants to serve all segments of the cable compatible device market, including the low-cost, low capability segment.'") (citations omitted).

CERTIFICATE OF SERVICE

I do hereby certify that on May 3, 2007, I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association On Requests for Waiver Filed by C&CC, Mid-Rivers, En-Touch and Click to be served via U.S. mail, on the following:

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